

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 34

Introduced by Assembly Member Nava
(Principal coauthor: Senator Calderon)

December 1, 2008

An act to amend Sections 10140.6, 10150, 10232.1, 10235.5, and 10236.4 of, to add Article 2.1 (commencing with Section 10166.01) to Chapter 3 of Division 4 of, and to repeal Section 10131.8 of, the Business and Professions Code, and to amend Sections 22101, 22101.5, 22102, 22104, 22107, 22108, 22109, 22112, 22153, 22165, 22166, 22170, 50002, 50003, 50121, 50122, 50124, 50125, 50126, 50130, 50204, 50205, 50309, 50314, 50320, 50700, and 50701 of, to add Sections 22012, 22013, 22014, 22015, 22016, 22017, 22018, 22019, 22020, 22021, 22022, 22023, 22166.5, 22180, 22181, 22182, 22183, 22184, 22185, 22186, 22187, 22188, 22189, 22190, 22191, 22192, 22193, 22194, 50110, 50110.1, 50110.2, 50110.3, 50110.4, 50110.5, 50110.6, 50110.7, 50110.8, 50110.9, 50110.10, 50110.11, 50110.12, 50110.16, 50209, and 50309.1 to, and to repeal Section 50705 of, the Financial Code, relating to mortgage lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 34, as amended, Nava. ~~Residential mortgage lending. Real estate, finance lender, and residential mortgage lender licenses: mortgage loan originators.~~

(1) Existing law, the Real Estate Law, governs the licensing and regulation of real estate licensees, as defined, as administered by the Real Estate Commissioner. Existing law imposes specified requirements on real estate brokers who solicit borrowers or lenders or negotiate

loans or collect payments or perform services for borrowers or lenders relative to loans secured by real property. A willful violation of the Real Estate Law is a crime.

This bill would require a real estate license endorsement from the commissioner in order to engage in the business of a mortgage loan originator, as defined. The bill would establish penalties if a real estate licensee fails to obtain a license endorsement before conducting business as a mortgage loan originator and would authorize the commissioner to suspend or revoke a real estate license for a failure to pay these penalties. The bill would require applicants for a license endorsement as a mortgage loan originator to furnish specified background information to the Nationwide Mortgage Licensing System and Registry. The bill would establish standards for issuance and renewal of a license endorsement to act as a mortgage loan originator, including satisfying specified educational requirements. The bill would require these real estate licensees to annually submit business activities reports, and other reports that may be required, to the commissioner. The bill would authorize the commissioner to examine the affairs of real estate brokers, including those that obtain license endorsement as a mortgage loan originator. The bill would require the commissioner to report violations of the provisions regulating real estate brokers and mortgage loan originators to the Nationwide Mortgage Licensing System and Registry. The bill would require recipients of a license endorsement as a mortgage loan originator to use or disclose a specified unique identifier provided by the Nationwide Mortgage Licensing System and Registry in advertisements and solicitations of the mortgage loan originator. The bill would enact other related provisions.

(2) Existing law provides for the licensure and regulation of finance lenders and brokers and residential mortgage lenders and servicers by the Department of Corporations. A willful violation of the laws regulating these licensees is a crime.

This bill would require the licensure and regulation of mortgage loan originators, as defined, under the California Finance Lenders Law and the California Residential Mortgage Lending Act. The bill would require mortgage loan originators to also be licensed and registered through the Nationwide Mortgage Licensing System and Registry. The bill would require applicants for licensure as a mortgage loan originator to furnish specified background information to the Nationwide Mortgage Licensing System and Registry and would require applicants for licensure or license renewal to satisfy certain requirements, including educational

requirements. The bill would require finance lenders and brokers engaged in the business of making or brokering residential mortgage loans to maintain a minimum net worth of \$250,000. The bill would require mortgage loan originators to submit reports of condition to the Nationwide Mortgage Licensing System and Registry and would authorize the commissioner to adopt regulations requiring finance lenders and brokers, and residential mortgage lenders or servicers, that employ mortgage loan originators to submit reports of condition to the Nationwide Mortgage Licensing System and Registry. The bill would require a person originating residential mortgage loans to use or disclose a specified unique identifier on all mortgage loan applications, solicitations, or advertisements. The bill would enact other related provisions.

(3) Because a willful violation of these provisions would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides for licensing and regulation of real estate brokers by the Real Estate Commissioner. Real estate brokers, among other things, are persons who solicit borrowers or lenders in connection with loans secured by liens on real property.~~

~~Existing law also provides for licensing and regulation of residential mortgage lenders by the Commissioner of Corporations.~~

~~This bill would state the intent of the Legislature to enact legislation relative to an effective system of supervision and enforcement of the mortgage lending industry, and would make legislative findings and declarations regarding recently enacted federal legislation and related matters.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

1 (a) Congress recently passed H.R. 3221, the Housing and
 2 Economic Recovery Act of 2008, which was signed into law by
 3 the President on July 30, 2008, and became Public Law 110-289.

4 (b) H.R. 3221 includes, as Title V of Division A of that act, the
 5 Secure and Fair Enforcement for Mortgage Licensing Act of 2008
 6 (the SAFE ACT).

7 (c) The activities of mortgage loan originators and the
 8 origination or offering of financing for residential real property
 9 have a direct, valuable, and immediate impact upon California’s
 10 consumers, the California economy, California’s communities and
 11 neighborhoods, and the housing and real estate industry.

12 (d) Accessibility to mortgage credit is vital to California
 13 residents.

14 (e) It is essential for the protection of California residents and
 15 the stability of the economy that reasonable standards for licensing
 16 and regulation of the business practices of mortgage loan
 17 originators be imposed.

18 (f) The obligations of mortgage loan originators to consumers
 19 in connection with originating or making of residential mortgage
 20 loans warrant the regulation of the mortgage lending process.

21 (g) The purpose of the SAFE Act is to protect consumers seeking
 22 mortgage loans and to ensure that the mortgage lending industry
 23 is operating without unfair, deceptive, or fraudulent practices on
 24 the part of mortgage loan originators.

25 ~~SEC. 2.—It is the intent of the Legislature to establish in this act~~
 26 ~~an effective system of supervision, regulation, and enforcement~~
 27 ~~of the mortgage lending industry, including the following:~~

28 ~~(a) The authority to issue licenses to conduct business under~~
 29 ~~this act, including the authority on the part of the administering~~
 30 ~~agency to promulgate rules and regulations or adopt procedures~~
 31 ~~necessary to the licensing of persons covered under this act.~~

32 ~~(b) The authority to deny, suspend, condition, or revoke licenses~~
 33 ~~under this act.~~

34 ~~(c) The authority to examine, investigate, and conduct~~
 35 ~~enforcement actions as necessary to carry out the intended purposes~~
 36 ~~of this act, including the authority to subpoena witnesses and~~
 37 ~~documents, enter orders, including cease and desist orders, order~~
 38 ~~restitution and monetary penalties, and order the removal and ban~~
 39 ~~of individuals from office or employment.~~

1 ~~(d) Participation by the Department of Corporations and the~~
2 ~~Department of Real Estate in the Nationwide Mortgage Licensing~~
3 ~~System and Registry.~~

4 *SEC. 2. Section 10131.8 of the Business and Professions Code*
5 *is repealed.*

6 ~~10131.8.—(a) A real estate broker who acts pursuant to~~
7 ~~subdivision (d) of Section 10131 and who meets all of the~~
8 ~~following requirements shall notify the department annually in~~
9 ~~writing on a form that is acceptable to the commissioner:~~

10 ~~(1) The real estate broker is an approved lender for the Federal~~
11 ~~Housing Administration, Veterans Administration, Farmers Home~~
12 ~~Administration, Government National Mortgage Association,~~
13 ~~Federal National Mortgage Administration, or the Federal Home~~
14 ~~Loan Mortgage Corporation.~~

15 ~~(2) The real estate broker makes residential mortgage loans to~~
16 ~~a loan applicant for a residential mortgage loan by using or~~
17 ~~advancing the broker's own funds, or by making a commitment~~
18 ~~to advance the broker's own funds.~~

19 ~~(3) The real estate broker makes the credit decision in the loan~~
20 ~~transaction.~~

21 ~~(4) The real estate broker at all times maintains a tangible net~~
22 ~~worth, computed in accordance with generally accepted accounting~~
23 ~~standards, of a minimum of two hundred fifty thousand dollars~~
24 ~~(\$250,000).~~

25 ~~(b) As used in paragraph (2) of subdivision (a), "own funds"~~
26 ~~means (1) cash, corporate capital, or warehouse credit lines at~~
27 ~~commercial banks, savings banks, savings and loan associations,~~
28 ~~industrial loan companies, or other sources that are liability items~~
29 ~~on the real estate broker's financial statements, whether secured~~
30 ~~or unsecured, or (2) cash, corporate capital, or warehouse credit~~
31 ~~lines at commercial banks, savings banks, savings and loan~~
32 ~~associations, industrial loan companies, or other sources that are~~
33 ~~liability items on the financial statements of an affiliate of the real~~
34 ~~estate broker, whether secured or unsecured. "Own funds" does~~
35 ~~not include funds provided by a third party to fund a loan on~~
36 ~~condition that the third party will subsequently purchase or accept~~
37 ~~an assignment of the loan.~~

38 *SEC. 3. Section 10140.6 of the Business and Professions Code*
39 *is amended to read:*

1 10140.6. (a) A real estate licensee shall not publish, circulate,
 2 distribute, ~~nor~~ or cause to be published, circulated, or distributed
 3 in any newspaper or periodical, or by mail, any matter pertaining
 4 to any activity for which a real estate license is required—~~which~~
 5 *that* does not contain a designation disclosing that he *or she* is
 6 performing acts for which a real estate license is required.

7 (b) (1) *A real estate licensee shall disclose his or her license*
 8 *identification number and, if that licensee is a mortgage loan*
 9 *originator, the unique identifier assigned to that licensee by the*
 10 *Nationwide Mortgage Licensing System and Registry, on all*
 11 *solicitation materials intended to be the first point of contact with*
 12 *consumers and on real property purchase agreements when acting*
 13 *as an agent in those transactions. The commissioner may adopt*
 14 *regulations identifying the materials in which a licensee must*
 15 *disclose a license identification number and, if that licensee is a*
 16 *mortgage loan originator, the unique identifier assigned to that*
 17 *licensee by the Nationwide Mortgage Licensing System and*
 18 *Registry.*

19 (2) *For purposes of this section, “solicitation materials intended*
 20 *to be the first point of contact with consumers” includes business*
 21 *cards, stationery, advertising fliers, and other materials designed*
 22 *to solicit the creation of a professional relationship between the*
 23 *licensee and a consumer, and excludes an advertisement in print*
 24 *or electronic media and “for sale” signs.*

25 (3) *Nothing in this section shall be construed to limit or change*
 26 *the requirement described in Section 10236.4 as applicable to real*
 27 *estate brokers.*

28 ~~The~~

29 (c) *The provisions of this section shall not apply to classified*
 30 *rental advertisements reciting the telephone number at the premises*
 31 *of the property offered for rent or the address of the property*
 32 *offered for rent.*

33 (d) *“Mortgage loan originator,” “unique identifier,” and*
 34 *“Nationwide Mortgage Licensing System and Registry” have the*
 35 *same meanings set forth in Section 10166.01.*

36 *SEC. 4. Section 10150 of the Business and Professions Code*
 37 *is amended to read:*

38 10150. (a) Application for the real estate broker license
 39 examination shall be made in writing to the commissioner. The
 40 commissioner may prescribe the format and content of the broker

1 examination application. The application for the broker
2 examination shall be accompanied by the real estate broker license
3 examination fee.

4 (b) Persons who have been notified by the commissioner that
5 they passed the real estate broker license examination may apply
6 for a real estate broker license. A person applying for the broker
7 examination may also apply for a real estate broker license.
8 However, a license shall not be issued until the applicant passes
9 the real estate broker license examination. If there is any change
10 to the information contained in a real estate broker license
11 application after the application has been submitted and before the
12 license has been issued, the commissioner may require the applicant
13 to submit a supplement to the application listing the changed
14 information.

15 (c) Application for the real estate broker license shall be made
16 in writing to the commissioner. The commissioner may prescribe
17 the format and content of the broker license application. The
18 application for the real estate broker license shall be accompanied
19 by the appropriate fee.

20 (d) *Application for an endorsement to act as a mortgage loan*
21 *originator, as defined in Section 10166.01, shall be made either*
22 *electronically or in writing to the commissioner. The commissioner*
23 *may prescribe the format and content of the mortgage loan*
24 *originator endorsement application, which shall meet the minimum*
25 *requirements for licensing of a mortgage loan originator, pursuant*
26 *to the Secure and Fair Enforcement for Mortgage Licensing Act*
27 *of 2008 (Public Law 110-289).*

28 *SEC. 5. Article 2.1 (commencing with Section 10166.01) is*
29 *added to Chapter 3 of Division 4 of the Business and Professions*
30 *Code, to read:*

31
32 *Article 2.1. Secure and Fair Enforcement for Mortgage Licenses*
33

34 *10166.01. For purposes of this article, the following definitions*
35 *shall apply:*

36 (a) *“SAFE Act” means the Secure and Fair Enforcement for*
37 *Mortgage Licensing Act of 2008 (Public Law 110-289).*

38 (b) (1) *“Mortgage loan originator” means an individual who*
39 *takes a residential mortgage loan application or offers or*
40 *negotiates terms of a residential mortgage loan for compensation*

1 or gain. An individual real estate licensee acting within the
2 meaning of paragraph (d) of Section 10131 is a mortgage loan
3 originator for purposes of this article with respect to activities
4 involving residential mortgage loans.

5 (2) Mortgage loan originator does not include any of the
6 following:

7 (A) An individual who performs purely administrative or clerical
8 tasks on behalf of a person meeting the definition of a mortgage
9 loan originator, except as otherwise provided in subdivision (d)
10 of Section 10166.03. The term “administrative or clerical tasks”
11 means the receipt, collection, and distribution of information
12 common for the processing or underwriting of a loan in the
13 mortgage industry and communication with a consumer to obtain
14 information necessary for the processing or underwriting of a
15 residential mortgage loan.

16 (B) An individual that is not compensated by a lender, other
17 mortgage loan originator, or by any agent of any lender or other
18 mortgage loan originator.

19 (C) An individual that is solely involved in extensions of credit
20 relating to timeshare plans, as that term is defined in Section
21 101(53D) of Title 11 of the United States Code.

22 (D) An individual licensed or registered as a mortgage loan
23 originator pursuant to the provisions of the Financial Code and
24 the SAFE Act.

25 (c) “Nationwide Mortgage Licensing System and Registry”
26 means a mortgage licensing system developed and maintained by
27 the Conference of State Bank Supervisors and the American
28 Association of Residential Mortgage Regulators for the licensing
29 and registration of mortgage loan originators.

30 (d) “Residential mortgage loan” means any loan primarily for
31 personal, family, or household use that is secured by a mortgage,
32 deed of trust, or other equivalent consensual security interest on
33 a dwelling, or residential real estate upon which is constructed or
34 intended to be constructed a dwelling. “Dwelling” means a
35 residential structure that contains one to four units, whether or
36 not that structure is attached to real property. The term includes
37 an individual condominium unit, cooperative unit, mobile home,
38 or trailer, if it is used as a residence.

1 (e) “Unique identifier” means a number or other identifier
2 assigned by protocols established by the Nationwide Mortgage
3 Licensing System and Registry.

4 (f) “Loan processor or underwriter” means an individual who
5 performs clerical or support duties as an employee at the direction
6 of, and subject to the supervision and instruction of, a mortgage
7 loan originator.

8 10166.02. (a) A real estate broker who acts pursuant to Section
9 10131.1 or subdivision (d) or (e) of Section 10131, and who makes,
10 arranges, or services loans secured by real property containing
11 one to four residential units, shall notify the department within 30
12 days of the effective date of this section or upon commencing that
13 activity, whichever is later. The notification shall be made in
14 writing on a form that is acceptable to the commissioner.

15 (b) No individual may engage in business as a mortgage loan
16 originator under this article without first doing both of the
17 following:

18 (1) Obtaining and maintaining a real estate license pursuant
19 to Article 2 (commencing with Section 10150).

20 (2) Obtaining and maintaining a real estate license endorsement
21 identifying that individual as a licensed mortgage loan originator.

22 (c) License endorsements shall be valid for a period of one year
23 and shall expire on the 31st of December each year.

24 (d) Applicants for a mortgage loan originator license
25 endorsement shall apply in a form prescribed by the commissioner.
26 Each form shall contain content as set forth by rule, regulation,
27 instruction, or procedure of the commissioner.

28 (e) In order to fulfill the purposes of this article, the
29 commissioner may establish relationships or contracts with the
30 Nationwide Mortgage Licensing System and Registry or other
31 entities designated by the Nationwide Mortgage Licensing System
32 and Registry to collect and maintain records and process
33 transaction fees or other fees related to licensees or other persons
34 subject to this article.

35 (f) A real estate broker who fails to notify the department
36 pursuant to subdivision (a), or who fails to obtain a license
37 endorsement required pursuant to subdivision (b), shall be assessed
38 a penalty of fifty dollars (\$50) per day for each day written
39 notification has not been received or a license endorsement has
40 not been obtained, up to and including the 30th day after the first

1 day of the assessment penalty. On and after the 31st day, the
2 penalty is one hundred dollars (\$100) per day, not to exceed a
3 total penalty of ten thousand dollars (\$10,000), regardless of the
4 number of days, until the department receives the written
5 notification or the licensee obtains the license endorsement.
6 Penalties for violations of subdivisions (a) and (b) shall be additive.

7 (g) The commissioner may suspend or revoke the license of a
8 real estate broker who fails to pay a penalty imposed pursuant to
9 this section. In addition, the commissioner may bring an action in
10 an appropriate court of this state to collect payment of that penalty.

11 (h) All penalties paid or collected under this section shall be
12 deposited into the Recovery Account of the Real Estate Fund and
13 shall, upon appropriation by the Legislature, be available for
14 expenditure for the purposes specified in Chapter 6.5 (commencing
15 with Section 10470).

16 10166.03. (a) A loan processor or underwriter who does not
17 represent to the public, through advertising or other means of
18 communicating or providing information, including the use of
19 business cards, stationery, brochures, signs, rate lists, or other
20 promotional items, that the individual can or will perform any of
21 the activities of a mortgage loan originator shall not be required
22 to obtain a license endorsement as a mortgage loan originator.

23 (b) An individual engaging solely in loan processor or
24 underwriter activities shall not represent to the public, through
25 advertising or other means of communicating or providing
26 information including the use of business cards, stationery,
27 brochures, signs, rate lists, or other promotional items, that the
28 individual can or will perform any of the activities of a mortgage
29 loan originator.

30 (c) An independent contractor who is employed by a mortgage
31 loan originator may not engage in the activities of a loan processor
32 or underwriter for a residential mortgage loan unless the
33 independent contractor loan processor or underwriter obtains and
34 maintains an endorsement as a mortgage loan originator under
35 this article. Each independent contractor loan processor or
36 underwriter who obtains and maintains an endorsement as a
37 mortgage loan originator under this article shall have and maintain
38 a valid unique identifier issued by the Nationwide Mortgage
39 Licensing System and Registry.

1 10166.04. (a) In connection with an application to the
2 commissioner for a license endorsement as a mortgage loan
3 originator, every applicant shall furnish to the Nationwide
4 Mortgage Licensing System and Registry information concerning
5 the applicant's identity, including the following:

6 (1) Fingerprints or fingerprint images, for purposes of
7 performing a state and federal criminal history background check.

8 (2) Personal history and experience in a form prescribed by the
9 Nationwide Mortgage Licensing System and Registry, including
10 the submission of authorization for the Nationwide Mortgage
11 Licensing System and Registry and the commissioner to obtain
12 both of the following:

13 (A) An independent credit report from a consumer reporting
14 agency.

15 (B) Information related to any administrative, civil, or criminal
16 findings by any governmental jurisdiction.

17 (b) If the Nationwide Mortgage Licensing System and Registry
18 electronically submits fingerprint images and related information,
19 as required by the Department of Justice, for an applicant for a
20 mortgage loan originator license endorsement, to the Department
21 of Justice for the purposes of obtaining information as to the
22 existence and content of a record of state convictions and state
23 arrests, and as to the existence and content of a record of state
24 arrests for which the Department of Justice establishes that the
25 person is free on bail or on his or her recognizance pending trial
26 or appeal, the Department of Justice shall provide an electronic
27 response to the Nationwide Mortgage Licensing System and
28 Registry pursuant to paragraph (1) of subdivision (p) of Section
29 11105 of the Penal Code, and shall provide the same electronic
30 response to the department.

31 (c) The Nationwide Mortgage Licensing System and Registry
32 may request from the Department of Justice subsequent arrest
33 notification service, as provided pursuant to Section 11105.2 of
34 the Penal Code, for persons described in subdivision (a). If
35 requested by the department, the Department of Justice shall
36 provide the same electronic response to the department.

37 (d) The Department of Justice shall charge a fee sufficient to
38 cover the cost of processing the requests described in this section.

39 10166.05. Notwithstanding any other provision of law, the
40 commissioner shall not issue a license endorsement to act as a

1 mortgage loan originator to an applicant unless the commissioner
2 makes all of the following findings:

3 (a) The applicant has never had a mortgage loan originator
4 license revoked in any other governmental jurisdiction.

5 (b) The applicant has not been convicted of, or pled guilty or
6 nolo contendere to, a felony in a domestic, foreign, or military
7 court, under either of the following conditions, however, any
8 conviction expunged from the applicant's record shall not be
9 considered a conviction for purposes of this subdivision:

10 (1) During the seven year period preceding the date of the
11 application for licensing.

12 (2) At any time preceding the date of application, if the felony
13 involved an act of fraud, dishonesty, a breach of trust, or money
14 laundering.

15 (c) The applicant has demonstrated such financial responsibility,
16 character, and general fitness as to command the confidence of
17 the community and warrant a determination that the mortgage
18 loan originator will operate honestly, fairly, and efficiently within
19 the purposes of the article.

20 (d) The applicant has complied with the education and written
21 testing requirements in Section 10166.06.

22 10166.06. (a) In addition to the requirements of Section 10153,
23 an applicant for a license endorsement as a mortgage loan
24 originator shall complete at least 20 hours of education courses,
25 which shall include at least the following:

26 (1) Three hours of federal law and regulations.

27 (2) Three hours of ethics, which shall include instruction on
28 fraud, consumer protection, and fair lending issues.

29 (3) Two hours of training related to lending standards for the
30 nontraditional mortgage product marketplace.

31 (b) For purposes of this section, education courses are only
32 acceptable if they have been reviewed and approved, or otherwise
33 deemed acceptable, by the Nationwide Mortgage Licensing System
34 and Registry, in accordance with the SAFE Act, and by the
35 commissioner. Education may be offered in a classroom, online,
36 or by any other means approved by the Nationwide Mortgage
37 Licensing System and Registry, in accordance with the SAFE Act,
38 and by the commissioner. The commissioner may substitute any
39 of the courses described in subdivision (a) for the course
40 requirements of Section 10153.2, 10153.3, 10153.4, or 10153.5,

1 *subject to a finding that the course requirements in subdivision*
2 *(a) are substantially equivalent to, and meet the intent of, Section*
3 *10153.2, 10153.3, 10153.4, or 10153.5, as applicable.*

4 *(c) A person who successfully completes the education*
5 *requirements approved by the Nationwide Mortgage Licensing*
6 *System and Registry in any state other than California shall be*
7 *granted credit by the commissioner toward completion of the*
8 *education requirements of this section.*

9 *(d) Before being issued a license endorsement to act as a*
10 *mortgage loan originator, an individual shall pass a qualified*
11 *written test developed or otherwise deemed acceptable by the*
12 *Nationwide Mortgage Licensing System and Registry and*
13 *administered by a test provider approved or otherwise deemed*
14 *acceptable by the Nationwide Mortgage Licensing System and*
15 *Registry.*

16 *(e) A written test shall not be treated as a qualified written test*
17 *for purposes of this section, unless the test adequately measures*
18 *the applicant's knowledge and comprehension in the following*
19 *subject areas: ethics, federal law and regulation pertaining to*
20 *mortgage origination, state law and regulation pertaining to*
21 *mortgage origination, and federal and state law and regulation*
22 *relating to fraud, consumer protection, the nontraditional mortgage*
23 *marketplace, and fair lending issues.*

24 *(f) Nothing in this section shall prohibit a test provider approved*
25 *by the Nationwide Mortgage Licensing System and Registry from*
26 *providing a test at the location of the employer of the applicant or*
27 *any subsidiary or affiliate of the employer of the applicant, or any*
28 *entity with which the applicant holds an exclusive arrangement to*
29 *conduct the business of a mortgage loan originator.*

30 *(g) An individual shall not be considered to have passed a*
31 *qualified written test administered pursuant to this section unless*
32 *the individual achieves a test score of not less than 75 percent*
33 *correct answers to questions.*

34 *(h) An individual who fails the qualified written test may retake*
35 *the test up to three consecutive times, although at least 30 days*
36 *must pass between each retesting.*

37 *(i) An applicant who fails three consecutive retests must wait*
38 *at least six months before retesting.*

39 *(j) A mortgage loan originator who fails to maintain a valid*
40 *license endorsement for a period of five years or longer or who*

1 *fails to register as a mortgage loan originator in accordance with*
2 *applicable California law shall retake the qualified written test.*

3 *10166.07. (a) A real estate broker who acts pursuant to Section*
4 *10131.1 or subdivision (d) or (e) of Section 10131, and who makes,*
5 *arranges, or services one or more loans in a calendar year that*
6 *are secured by real property containing one to four residential*
7 *units, shall annually file a business activities report, within 90*
8 *days after the end of the broker's fiscal year or within any*
9 *additional time as the commissioner may allow for filing for good*
10 *cause. The report shall contain within its scope all of the following*
11 *information for the fiscal year, relative to the business activities*
12 *of the broker and those of any other brokers and real estate*
13 *salespersons acting under that broker's supervision:*

14 *(1) Name and license number of the supervising broker and*
15 *names and license numbers of the real estate brokers and*
16 *salespersons under that broker's supervision. The report shall*
17 *include brokers and salespersons who were under the supervising*
18 *broker's supervision for all or part of the year.*

19 *(2) A list of the real estate-related activities in which the*
20 *supervising broker and the brokers and salespersons under his or*
21 *her supervision engaged during the prior year. This listing shall*
22 *identify all of the following:*

23 *(A) Activities relating to mortgages, including arranging,*
24 *making, or servicing.*

25 *(B) Other activities performed under the real estate broker's*
26 *or salesperson's license.*

27 *(C) Activities performed under related licenses, including, but*
28 *not limited to, a license to engage as a finance lender or a finance*
29 *broker under the California Finance Lenders Law (Division 9*
30 *commencing with Section 22000) of the Financial Code), or a*
31 *license to engage as a residential mortgage lender or residential*
32 *mortgage loan servicer under the California Residential Mortgage*
33 *Lending Act (Division 20 commencing with Section 50000) of the*
34 *Financial Code).*

35 *(3) A list of the forms of media used by the broker and those*
36 *under his or her supervision to advertise to the public, including*
37 *print, radio, television, the Internet, or other means.*

38 *(4) For fixed rate loans made, brokered, or serviced, all of the*
39 *following:*

1 (A) *The total number, aggregate principal amount, lowest*
2 *interest rate, highest interest rate, and a list of the institutional*
3 *lenders of record. If the loan was funded by any lender other than*
4 *an institutional lender, the broker shall categorize the loan as*
5 *privately funded.*

6 (B) *The total number and aggregate principal amount of covered*
7 *loans, as defined in Section 4970 of the Financial Code.*

8 (C) *The total number and aggregate principal amount of loans*
9 *for which Department of Real Estate form RE Form 885 or an*
10 *equivalent is required.*

11 (5) *For adjustable rate loans made, brokered, or serviced, all*
12 *of the following:*

13 (A) *The total number, aggregate principal amount, lowest*
14 *beginning interest rate, highest beginning interest rate, highest*
15 *margin, and a list of the institutional lenders of record. If the loan*
16 *was funded by any lender other than an institutional lender, the*
17 *broker shall categorize the loan as privately funded.*

18 (B) *The total number and aggregate principal amount of covered*
19 *loans, as defined in Section 4970 of the Financial Code.*

20 (C) *The total number and aggregate principal amount of loans*
21 *for which Department of Real Estate form RE Form 885 or an*
22 *equivalent is required.*

23 (6) *For all loans made, brokered, or serviced, the total number*
24 *and aggregate principal amount of loans funded by institutional*
25 *lenders, and the total number and aggregate principal amount of*
26 *loans funded by private lenders.*

27 (7) *For all loans made, brokered, or serviced, the total number*
28 *and aggregate principal amount of loans that included a*
29 *prepayment penalty, the minimum prepayment penalty length, the*
30 *maximum prepayment penalty length, and the number of loans*
31 *with prepayment penalties whose length exceeded the length of*
32 *time before the borrower's loan payment amount could increase.*

33 (8) *For all loans brokered, the total compensation received by*
34 *the broker, including yield spread premiums, commissions, and*
35 *rebates, but excluding compensation used to pay fees for*
36 *third-party services on behalf of the borrower.*

37 (9) *For all mortgage loans made or brokered, the total number*
38 *of loans for which a mortgage loan disclosure statement was*
39 *provided in a language other than English, and the number of*
40 *forms provided per language other than English.*

1 (10) For all mortgage loans serviced, the total amount of funds
2 advanced to be applied toward a payment to protect the security
3 of the note being serviced.

4 (11) For purposes of this section, an institutional lender has
5 the meaning specified in paragraph (1) of subdivision (c) of Section
6 10232.

7 (b) A broker subject to this section and Section 10232.2 may
8 file consolidated reports that include all of the information required
9 under this section and Section 10232.2. Those consolidated reports
10 shall clearly indicate that they are intended to satisfy the
11 requirements of both sections.

12 (c) If a broker subject to this section fails to timely file the report
13 required under this section, the commissioner may cause an
14 examination and report to be made and may charge the broker
15 one and one-half times the cost of making the examination and
16 report. In determining the hourly cost incurred by the commissioner
17 for conducting an examination and preparing the report, the
18 commissioner may use the estimated average hourly cost for all
19 department audit staff performing audits of real estate brokers. If
20 a broker fails to pay the commissioner's cost within 60 days of the
21 mailing of a notice of billing, the commissioner may suspend the
22 broker's license or deny renewal of that license. The suspension
23 or denial shall remain in effect until the billed amount is paid or
24 the broker's right to renew a license has expired. The commissioner
25 may maintain an action for the recovery of the billed amount in
26 any court of competent jurisdiction.

27 (d) The report described in this section is exempted from any
28 requirement of public disclosure by paragraph (2) of subdivision
29 (d) of Section 6254 of the Government Code.

30 10166.08. Each mortgage loan originator shall submit reports
31 of condition to the Nationwide Mortgage Licensing System and
32 Registry reports of condition, and those reports shall be in the
33 form and shall contain information as the Nationwide Mortgage
34 Licensing System and Registry may require.

35 10166.09. The minimum standards for renewal of an
36 endorsement as a mortgage loan originator shall include the
37 following:

38 (a) The mortgage loan originator continues to meet the minimum
39 standards for obtaining an endorsement as a mortgage loan
40 originator.

1 (b) *The mortgage loan originator satisfies the annual continuing*
2 *education requirements described in Section 10166.10.*

3 *10166.10. (a) A mortgage loan originator shall complete at*
4 *least eight hours of continuing education annually, which shall*
5 *include at least three hours relating to federal law and regulations,*
6 *two hours of ethics, which shall include instruction on fraud,*
7 *consumer protection, and fair lending issues, and two hours related*
8 *to lending standards for the nontraditional mortgage product*
9 *marketplace.*

10 (b) *For purposes of subdivision (a), continuing education*
11 *courses and course providers shall be reviewed and approved by*
12 *the commissioner and the Nationwide Mortgage Licensing System*
13 *and Registry.*

14 (c) *The commissioner shall have the authority to substitute any*
15 *of the courses described in subdivision (a) for the course*
16 *requirements of Section 10170.5, subject to a finding that the*
17 *course requirements in subdivision (a) are substantially equivalent*
18 *to, and meet the intent of, Section 10170.5.*

19 (d) *Nothing in this section shall preclude any education course,*
20 *as approved by the commissioner and the Nationwide Mortgage*
21 *Licensing System and Registry, that is provided by the employer*
22 *of the mortgage loan originator or an entity that is affiliated with*
23 *the mortgage loan originator by an agency contract, or any*
24 *subsidiary or affiliate of the employer or entity.*

25 (e) *Continuing education may be offered either in a classroom,*
26 *online, or by any other means approved by the commissioner and*
27 *the Nationwide Mortgage Licensing System and Registry.*

28 (f) *A mortgage loan originator may only receive credit for a*
29 *continuing education course in the year in which the course is*
30 *taken.*

31 (g) *A mortgage loan originator may not take the same approved*
32 *course in the same or successive years to meet the requirements*
33 *of this section for continuing education.*

34 (h) *A mortgage loan originator who is an instructor of an*
35 *approved continuing education course may receive credit for his*
36 *or her own annual continuing education requirement at the rate*
37 *of two hours credit for every one hour taught.*

38 (i) *A person who successfully completes the education*
39 *requirements approved by the Nationwide Mortgage Licensing*
40 *System and Registry in any state other than California shall be*

1 granted credit by the commissioner towards completion of
2 continuing education requirements in this state.

3 (j) A mortgage loan originator whose license endorsement
4 lapses, expires, or is suspended or revoked, and who wishes to
5 regain his or her license endorsement, shall complete continuing
6 education requirements for the last year in which the endorsement
7 was held, prior to issuance of a new or renewed endorsement.

8 10166.11. (a) A real estate broker who acts pursuant to Section
9 10131.1 or subdivision (d) or (e) of Section 10131 and who makes,
10 arranges, or services loans secured by real property containing
11 one to four residential units, shall keep documents and records
12 that will properly enable the commissioner to determine whether
13 the residential mortgage brokerage, servicing, and lending
14 functions performed by the broker comply with this division and
15 with all applicable rules and orders made by the commissioner.
16 These documents shall include, at a minimum, the documents
17 described in Section 10148. Upon request of the commissioner, a
18 real estate broker shall file an authorization for disclosure to the
19 commissioner of financial records of his or her licensed business
20 pursuant to Section 7473 of the Government Code.

21 (b) Notwithstanding subdivision (a) of Section 10148, the
22 business documents and records of real estate brokers described
23 in subdivision (a) and real estate salespersons acting under those
24 brokers are subject to inspection and examination or audit by the
25 commissioner, at his or her discretion, after reasonable notice.
26 That real estate broker or salesperson shall, upon request by the
27 commissioner and within the time period specified in that request,
28 allow the commissioner, or his or her authorized representative,
29 to inspect and copy any business documents and records. The
30 commissioner may suspend or revoke the license of the broker or
31 salesperson if he or she fails to produce documents or records
32 within the time period specified in the request.

33 (c) Inspection and examination or audit reports prepared by
34 the commissioner's duly designated representatives pursuant to
35 this section are not public records. Those reports may be disclosed
36 to the officers or directors of a licensee that is the subject of the
37 report for the purpose of corrective action. That disclosure shall
38 not operate as a waiver of the exemption specified in subdivision
39 (d) of Section 6254 of the Government Code.

1 10166.12. (a) As often as the commissioner deems necessary
2 and appropriate, the commissioner shall examine the affairs of
3 each real estate broker who is required to notify the commissioner
4 or obtain a license endorsement pursuant to Section 10166.02 for
5 compliance with this part. These examinations shall also include
6 a review of the affairs of all real estate brokers and real estate
7 salespersons acting under the supervision of each real estate
8 broker who is required to file reports with the department pursuant
9 to Section 10166.07. The commissioner shall appoint suitable
10 persons to perform these examinations. The commissioner and his
11 or her appointees may examine the books, records, and documents
12 of the licensee, and may examine the licensee's officers, directors,
13 employees, or agents under oath regarding the licensee's
14 operations. The commissioner may cooperate with any agency of
15 the state or federal government, other states, agencies, the Federal
16 National Mortgage Association, or the Federal Home Loan
17 Mortgage Corporation. The commissioner may accept an
18 examination conducted by one of these entities in place of an
19 examination by the commissioner under this section, unless the
20 commissioner determines that the examination does not provide
21 information necessary to enable the commissioner to fulfill his or
22 her responsibilities under this division.

23 (b) The commissioner may impose a penalty against a real estate
24 broker or real estate salesperson whose affairs are examined or
25 reviewed pursuant to subdivision (a) based on the findings of the
26 examination or review. The commissioner may suspend or revoke
27 the license or license endorsement of a real estate broker or real
28 estate salesperson who fails to pay that penalty. In addition, the
29 commissioner may bring an action in an appropriate court of this
30 state to collect payment of the penalty.

31 (c) Penalties collected pursuant to subdivision (b) shall be
32 deposited into the Recovery Account of the Real Estate Fund and
33 shall, upon appropriation by the Legislature, be available for
34 expenditure for the purposes specified in Chapter 6.5 (commencing
35 with Section 10470).

36 (d) The statement of the findings of an examination conducted
37 pursuant to this section shall belong to the commissioner and shall
38 not be disclosed to anyone other than the licensee, law enforcement
39 officials, or other state or federal regulatory agencies for further
40 investigation and enforcement. Reports required of licensees by

1 *the commissioner under this division and results of examinations*
2 *performed by the commissioner under this division are the property*
3 *of the commissioner.*

4 *10166.13. A real estate broker who acts pursuant to Section*
5 *10131.1 or subdivision (d) or (e) of Section 10131 and who makes,*
6 *arranges, or services loans secured by real property containing*
7 *one to four residential units shall make any special reports to the*
8 *commissioner that the commissioner may, from time to time,*
9 *require.*

10 *10166.14. A real estate broker shall notify the department when*
11 *he or she is no longer subject to this part. If a broker has already*
12 *made reports required by Sections 10166.07 and 10166.08 within*
13 *the year, he or she shall continue reports for that year, but shall*
14 *notify the department prior to the expiration of that year that he*
15 *or she will no longer be subject to this part in the succeeding year.*

16 *10166.15. (a) The commissioner shall regularly report*
17 *violations of this article, as well as enforcement actions taken*
18 *against any mortgage loan originator to whom an endorsement*
19 *has been issued, and enforcement actions taken against any*
20 *individual for failure to obtain an endorsement as a mortgage loan*
21 *originator, to the Nationwide Mortgage Licensing System and*
22 *Registry.*

23 *(b) The commissioner shall establish a process that may be used*
24 *by mortgage loan originators to challenge information entered*
25 *into the Nationwide Mortgage Licensing System and Registry by*
26 *the commissioner.*

27 *(c) The commissioner is authorized to promulgate regulations*
28 *specifying (1) the recordkeeping requirements that mortgage loan*
29 *originators shall satisfy and (2) the penalties that shall apply to*
30 *mortgage loan originators for violations of this article.*

31 *10166.16. (a) Except as otherwise provided in Section 1512*
32 *of the SAFE Act, the requirements under any federal or state law*
33 *regarding the privacy or confidentiality of any information or*
34 *material provided to the Nationwide Mortgage Licensing System*
35 *and Registry, and any privilege arising under federal or state law,*
36 *including the rules of any federal or state court, with respect to*
37 *that information or material, shall continue to apply to the*
38 *information or material after the information or material has been*
39 *disclosed to the Nationwide Mortgage Licensing System and*
40 *Registry. The information and material may be shared with all*

1 *state and federal regulatory officials with mortgage industry*
2 *oversight authority without the loss of privilege or the loss of*
3 *confidentiality protections provided by federal or state law.*

4 *(b) For these purposes, the commissioner is authorized to enter*
5 *agreements or sharing arrangements with other governmental*
6 *agencies, the Conference of State Bank Supervisors, the American*
7 *Association of Residential Mortgage Regulators, or other*
8 *associations representing governmental agencies as established*
9 *by rule, regulation or order of the commissioner.*

10 *(c) Information or material that is subject to a privilege or*
11 *confidentiality under subdivision (a) shall not be subject to either*
12 *of the following:*

13 *(1) Disclosure under any state law governing the disclosure to*
14 *the public of information held by an officer or an agency of the*
15 *state.*

16 *(2) Subpoena or discovery, or admission into evidence, in any*
17 *private civil action or administrative process, unless with respect*
18 *to any privilege held by the Nationwide Mortgage Licensing System*
19 *and Registry with respect to the information or material, the person*
20 *to whom the information or material pertains waives, in whole or*
21 *in part, in the discretion of the person, that privilege.*

22 *(d) This section shall not apply with respect to the information*
23 *or material relating to the employment history of, and publicly*
24 *adjudicated disciplinary and enforcement actions against,*
25 *mortgage loan originators that is included in the Nationwide*
26 *Mortgage Licensing System and Registry for access by the public.*

27 *10166.17. In addition to any other duties imposed upon the*
28 *commissioner by law, the commissioner shall require mortgage*
29 *loan originators to be licensed and registered through the*
30 *Nationwide Mortgage Licensing System and Registry. In order to*
31 *carry out this requirement the commissioner is authorized to*
32 *participate in the Nationwide Mortgage Licensing System and*
33 *Registry. For this purpose, the commissioner may establish by*
34 *rule, regulation, or order, requirements as necessary, including,*
35 *but not limited to, the following:*

36 *(a) Background checks for the following:*

37 *(1) Criminal history through fingerprint or other databases.*

38 *(2) Civil or administrative records.*

39 *(3) Credit history.*

1 (4) Any other information as deemed necessary by the
 2 Nationwide Mortgage Licensing System and Registry.

3 (b) The payment of fees to apply for or renew licenses through
 4 the Nationwide Mortgage Licensing System and Registry.

5 (c) The setting or resetting as necessary of renewal or reporting
 6 dates.

7 (d) Requirements for amending or surrendering a license or
 8 any other activities as the commissioner deems necessary for
 9 participation in the Nationwide Mortgage Licensing System and
 10 Registry.

11 SEC. 6. Section 10232.1 of the Business and Professions Code
 12 is amended to read:

13 10232.1. (a) A real estate broker, prior to the use of any
 14 proposed advertisement in connection with the conduct of activities
 15 described in subdivisions (d) and (e) of Section 10131 and Section
 16 10131.1, ~~may~~ shall submit a true copy thereof to the Department
 17 of Real Estate for approval. The submission shall be accompanied
 18 by a fee of not more than forty dollars (\$40). The commissioner
 19 shall by regulation prescribe the amount of the fee. If disapproval
 20 of the proposed advertisement is not communicated by the
 21 department to the broker within 15 calendar days after receipt of
 22 the copy of the proposed advertisement by the department, the
 23 proposed advertisement shall be deemed approved, but the
 24 department shall not be precluded from disapproving a later
 25 publication or other use of the same or similar advertising.

26 The commissioner shall adopt regulations pertaining to the
 27 submittal and clearance of that advertising and establishing criteria
 28 for approval to ensure that the public will be protected against
 29 false or misleading representations.

30 Except as provided in subdivision (b), “advertisement” includes
 31 dissemination in any newspaper, circular, form letter, brochure or
 32 similar publication, display, sign, radio broadcast or telecast, which
 33 concerns (1) the use, terms, rates, conditions, or the amount of any
 34 loan or sale referred to in subdivisions (d) and (e) of Section 10131
 35 or Section 10131.1 or (2) the security, solvency, or stability of any
 36 person carrying on the activities described in those sections.

37 (b) “Advertisement” does not include a letter or brochure that
 38 meets both of the following criteria:

39 (1) It is restricted in distribution to other real estate brokers and
 40 to persons for whom the broker has previously acted as an agent

1 in arranging a loan secured by real property or in the purchase,
2 sale, or exchange of a deed of trust or real property sales contract.

3 (2) It is restricted in content to the identification and a
4 description of the terms of loans, mortgages, deeds of trust, real
5 property sales contracts, or any combination thereof offered for
6 funding or purchase through the broker as agent.

7 (c) Subdivision (a) is not applicable to advertising that is used
8 exclusively in connection with an offering authorized by permit
9 issued pursuant to the applicable provisions of the Corporate
10 Securities Law of 1968 (Division 1 (commencing with Section
11 25000 of Title 4 of the Corporations Code).

12 (d) All advertising approvals shall be for a period of five years
13 after the date of approval. The approval period applies to all
14 advertising, including that which was previously submitted on a
15 mandatory basis.

16 *SEC. 7. Section 10235.5 of the Business and Professions Code*
17 *is amended to read:*

18 10235.5. (a) No real estate licensee *or mortgage loan*
19 *originator* shall place an advertisement disseminated primarily in
20 this state for a loan unless there is disclosed within the printed text
21 of that advertisement, or the oral text in the case of a radio or
22 television advertisement, the ~~license~~ *Department of Real Estate*
23 *license number and the unique identifier assigned to that licensee*
24 *by the Nationwide Mortgage Licensing System and Registry* under
25 which the loan would be made or arranged, *and that the*
26 *advertisement has been approved by the commissioner.*

27 (b) *“Mortgage loan originator,” “unique identifier,” and*
28 *“Nationwide Mortgage Licensing System and Registry” have the*
29 *same meanings set forth in Section 10166.01.*

30 *SEC. 8. Section 10236.4 of the Business and Professions Code*
31 *is amended to read:*

32 10236.4. (a) In compliance with Section 10235.5, every
33 licensed real estate broker shall also display his or her license
34 number on all advertisements where there is a solicitation for
35 borrowers or potential investors. *Every mortgage loan originator,*
36 *as defined in Section 10166.01, shall also display the unique*
37 *identifier assigned to that individual by the Nationwide Mortgage*
38 *Licensing System and Registry on all advertisements where there*
39 *is a solicitation for borrowers.*

1 (b) The disclosures required by Sections 10232.4 and 10240
2 shall include the licensee's license number, *the mortgage*
3 *originator's unique identifier, if applicable*, and the department's
4 license information telephone number.

5 (c) ~~This section shall become operative July 1, 1998. "Mortgage~~
6 ~~loan originator," "unique identifier," and "Nationwide Mortgage~~
7 ~~Licensing System and Registry" have the same meanings set forth~~
8 ~~in Section 10166.01.~~

9 SEC. 9. Section 22012 is added to the Financial Code, to read:
10 22012. "Depository institution" has the same meaning as in
11 Section 3 of the Federal Deposit Insurance Act, and includes any
12 credit union.

13 SEC. 10. Section 22013 is added to the Financial Code, to
14 read:

15 22013. "Federal banking agencies" means the Board of
16 Governors of the Federal Reserve System, the Comptroller of the
17 Currency, the Director of the Office of Thrift Supervision, the
18 National Credit Union Administration, and the Federal Deposit
19 Insurance Corporation.

20 SEC. 11. Section 22014 is added to the Financial Code, to
21 read:

22 22014. "Immediate family member" means a spouse, child,
23 sibling, parent, grandparent, or grandchild. This includes
24 stepparents, stepchildren, stepsiblings, and adoptive relationships.

25 SEC. 12. Section 22015 is added to the Financial Code, to
26 read:

27 22015. "Individual" means a natural person.

28 SEC. 13. Section 22016 is added to the Financial Code, to
29 read:

30 22016. (a) "Loan processor or underwriter" means an
31 individual who performs clerical or support duties as an employee
32 at the direction of and subject to the supervision and instruction
33 of a person licensed, or exempt from licensing under Section 22194
34 of the Financial Code.

35 (b) For purposes of subdivision (a), the term "clerical or support
36 duties" may include the following, subsequent to the receipt of an
37 application:

38 (1) The receipt, collection, distribution, and analysis of
39 information common for the processing or underwriting of a
40 residential mortgage loan.

1 (2) *Communicating with a consumer to obtain the information*
2 *necessary for the processing or underwriting of a loan, to the*
3 *extent that communication does not include offering or negotiating*
4 *loan rates or terms, or counseling consumers about residential*
5 *mortgage loan rates or terms.*

6 (c) *An individual engaging solely in loan processor or*
7 *underwriter activities shall not represent to the public, through*
8 *advertising or other means of communicating or providing*
9 *information including the use of business cards, stationery,*
10 *brochures, signs, rate lists, or other promotional items, that the*
11 *individual can or will perform any of the activities of a mortgage*
12 *loan originator.*

13 SEC. 14. *Section 22017 is added to the Financial Code, to*
14 *read:*

15 22017. (a) *“Mortgage loan originator” means an individual*
16 *who for compensation or gain or in the expectation of*
17 *compensation or gain does any of the following:*

18 (1) *Takes a residential mortgage loan application.*

19 (2) *Offers or negotiates terms of a residential mortgage loan.*

20 (b) *“Mortgage loan originator” does not include any of the*
21 *following:*

22 (1) *An individual engaged solely as a loan processor or*
23 *underwriter, except as otherwise provided in subdivision (d) of*
24 *Section 22194.*

25 (2) *A person or entity that only performs real estate brokerage*
26 *activities and is licensed or registered in accordance with*
27 *California law, unless the person or entity is compensated by a*
28 *lender, a mortgage broker, or other mortgage loan originator or*
29 *by any agent of that lender, mortgage broker, or other mortgage*
30 *loan originator.*

31 (3) *A person or entity solely involved in extensions of credit*
32 *relating to timeshare plans, as that term is defined in Section*
33 *101(53D) of Title 11 of the United States Code.*

34 SEC. 15. *Section 22018 is added to the Financial Code, to*
35 *read:*

36 22018. *“Nationwide Mortgage Licensing System and Registry”*
37 *means a mortgage licensing system developed and maintained by*
38 *the Conference of State Bank Supervisors and the American*
39 *Association of Residential Mortgage Regulators for the licensing*
40 *and registration of licensed mortgage loan originators.*

1 SEC. 16. Section 22019 is added to the Financial Code, to
2 read:

3 22019. “Nontraditional mortgage product” means any
4 mortgage product other than a 30-year fixed rate mortgage, except
5 as provided in Section 22171 and the regulations adopted
6 thereunder.

7 SEC. 17. Section 22020 is added to the Financial Code, to
8 read:

9 22020. “Registered mortgage loan originator” means any
10 individual who:

11 (a) Meets the definition of a mortgage loan originator under
12 Section 22017 and is an employee of either:

13 (1) A depository institution.

14 (2) A subsidiary that is owned and controlled by a depository
15 institution and regulated by a federal banking agency.

16 (3) An institution regulated by the Farm Credit Administration.

17 (b) Is registered with, and maintains a unique identifier through,
18 the Nationwide Mortgage Licensing System and Registry.

19 SEC. 18. Section 22021 is added to the Financial Code, to
20 read:

21 22021. “Residential mortgage loan” means any loan primarily
22 for personal, family, or household use that is secured by a
23 mortgage, deed of trust, or other equivalent consensual security
24 interest on a dwelling, as defined in Section 103(v) of the Truth in
25 Lending Act, or residential real estate upon which is constructed
26 or intended to be constructed a dwelling. “Dwelling” means a
27 residential structure that contains one to four units, whether or
28 not that structure is attached to real property. The term includes
29 an individual condominium unit, cooperative unit, mobile home,
30 or trailer, if it is used as a residence.

31 SEC. 19. Section 22022 is added to the Financial Code, to
32 read:

33 22022. “Residential real estate” means any real property
34 located in this state, upon which is constructed or intended to be
35 constructed a dwelling.

36 SEC. 20. Section 22023 is added to the Financial Code, to
37 read:

38 22023. “Unique identifier” means a number or other identifier
39 assigned by protocols established by the Nationwide Mortgage
40 Licensing System and Registry.

1 *SEC. 21. Section 22101 of the Financial Code is amended to*
2 *read:*

3 22101. (a) An application for a *finance lender or broker* license
4 under this division shall be in the form and contain the information
5 that the commissioner may by rule require and shall be filed upon
6 payment of the fee specified in Section 22103.

7 (b) Notwithstanding any other provision of law, an applicant
8 who does not currently hold a license *as a finance lender or broker*
9 under this division shall furnish with his or her application, a full
10 set of fingerprints and related information for purposes of the
11 commissioner conducting a criminal history record check. The
12 commissioner shall obtain and receive criminal history information
13 from the Department of Justice and the Federal Bureau of
14 Investigation pursuant to Section 22101.5.

15 (c) Nothing in this section shall be construed to prevent a
16 licensee from engaging in the business of a finance lender through
17 a subsidiary corporation if the subsidiary corporation is licensed
18 pursuant to this division.

19 (d) For purposes of this section, “subsidiary corporation” means
20 a corporation that is wholly owned by a licensee.

21 (e) A new application shall not be required for a change in the
22 address of an existing location previously licensed under this
23 division. However, the licensee shall comply with the requirements
24 of Section 22153.

25 (f) *Notwithstanding any other provision of this section, the*
26 *commissioner may by rule require an application to be made*
27 *through the Nationwide Mortgage Licensing System and Registry,*
28 *and may require fees, fingerprints, financial statements, supporting*
29 *documents, changes of address, any other information, and*
30 *amendments or modifications thereto, to be submitted in the same*
31 *manner.*

32 *SEC. 22. Section 22101.5 of the Financial Code is amended*
33 *to read:*

34 22101.5. (a) The commissioner shall submit to the Department
35 of Justice fingerprint images and related information required by
36 the Department of Justice of all license candidates, as defined by
37 subdivision (a) of Section 22101, for purposes of obtaining
38 information as to the existence and content of a record of state or
39 federal convictions, state or federal arrests, and information as to
40 the existence and content of a record of state or federal arrests for

1 which the Department of Justice establishes that the person is free
2 on bail or on his or her own recognizance pending trial or appeal.

3 (b) When received, the Department of Justice shall forward to
4 the Federal Bureau of Investigation requests for federal summary
5 criminal history information received pursuant to this section. The
6 Department of Justice shall review the information returned from
7 the Federal Bureau of Investigation and compile and disseminate
8 a response to the commissioner.

9 (c) The Department of Justice shall provide a response to the
10 commissioner pursuant to paragraph (1) of subdivision (p) of
11 Section 11105 of the Penal Code.

12 (d) The commissioner shall request from the Department of
13 Justice subsequent arrest notification service, as provided pursuant
14 to Section 11105.2 of the Penal Code, for license candidates
15 described in subdivision (a).

16 (e) The Department of Justice shall charge a fee sufficient to
17 cover the costs of processing the requests pursuant to this section.

18 (f) ~~This section shall become operative on July 1, 2006.~~
19 *Notwithstanding any other provision in this section, the*
20 *commissioner may by rule require fingerprints submitted by an*
21 *applicant to be submitted to the Nationwide Mortgage Licensing*
22 *System and Registry in addition to the Department of Justice.*

23 *SEC. 23. Section 22102 of the Financial Code is amended to*
24 *read:*

25 22102. (a) A licensee seeking to engage in business at a new
26 location shall submit an application to the commissioner by
27 certified mail, return receipt requested, at least 10 days before
28 engaging in business at a new location and pay the fee required
29 by Section 22103.

30 (b) The commissioner, by regulation, shall adopt a form for the
31 application required by this section. The application shall contain
32 the following information:

33 (1) The address of the new location.

34 (2) Information on the person responsible for the lending activity
35 at the new location.

36 (3) Any additional information required by the commissioner.

37 (c) The licensee may engage in business at the new location 10
38 days after the date of mailing the application to engage in business
39 at that location.

1 (d) (1) The commissioner shall approve or deny the person
2 responsible for the lending activity at the new location in
3 accordance with Section 22109, and shall notify the licensee of
4 this decision within 90 days of the date of receipt of the application.

5 (2) If the commissioner denies the application, the licensee shall,
6 within 10 days of the date of receipt of notification of the
7 commissioner's denial, submit a new application to the
8 commissioner designating a different person responsible for the
9 lending activity at the new location. The commissioner shall
10 approve or deny the different person as provided in paragraph (1).

11 (e) A licensee shall not engage in business at a new location in
12 a name other than a name approved by the commissioner.

13 (f) The commissioner may adopt regulations to implement the
14 requirements of this section.

15 (g) A license to engage in business at a new location shall be
16 issued in accordance with this section. A change of street address
17 of a place of business designated in a license shall be made in
18 accordance with Section 22153 and shall not constitute a new
19 location subject to the requirements of this section.

20 (h) *Notwithstanding any other provision in this section, the*
21 *commissioner may by rule require a licensee to submit applications*
22 *to engage in business at a new location through the Nationwide*
23 *Mortgage Licensing System and Registry.*

24 *SEC. 24. Section 22104 of the Financial Code is amended to*
25 *read:*

26 22104. The applicant shall file with the application financial
27 statements prepared in accordance with generally accepted
28 accounting principles and acceptable to the commissioner that
29 indicate a net worth of at least twenty-five thousand dollars
30 (\$25,000). A licensee shall maintain a net worth of at least
31 twenty-five thousand dollars (\$25,000) at all times. *A finance*
32 *lender or broker engaged in the business of making or brokering*
33 *residential mortgage loans shall maintain a net worth of at least*
34 *two hundred fifty thousand dollars (\$250,000).*

35 *SEC. 25. Section 22107 of the Financial Code is amended to*
36 *read:*

37 22107. (a) Each licensee shall pay to the commissioner its pro
38 rata share of all costs and expenses reasonably incurred in the
39 administration of this division, as estimated by the commissioner,
40 for the ensuing year and any deficit actually incurred or anticipated

1 in the administration of the program in the year in which the
2 assessment is made. The pro rata share shall be the proportion that
3 a licensee's gross income bears to the aggregate gross income of
4 all licensees as shown by the annual financial reports to the
5 commissioner, for the costs and expenses remaining after the
6 amount assessed pursuant to subdivision (c).

7 (b) On or before the 30th day of May in each year, the
8 commissioner shall notify each licensee by mail of the amount
9 assessed and levied against it and that amount shall be paid within
10 20 days thereafter. If payment is not made within 20 days, the
11 commissioner shall assess and collect a penalty, in addition to the
12 assessment, of 1 percent of the assessment for each month or part
13 of a month that the payment is delayed or withheld.

14 (c) In the levying and collection of the assessment, a licensee
15 shall neither be assessed for nor be permitted to pay less than two
16 hundred fifty dollars (\$250) per licensed location per year.

17 (d) If a licensee fails to pay the assessment on or before the 30th
18 day of June following the day upon which payment is due, the
19 commissioner may by order summarily suspend or revoke the
20 certificate issued to the licensee. If, after an order is made, a request
21 for hearing is filed in writing within 30 days, and a hearing is not
22 held within 60 days thereafter, the order is deemed rescinded as
23 of its effective date. During any period when its certificate is
24 revoked or suspended, a licensee shall not conduct business
25 pursuant to this division except as may be permitted by order of
26 the commissioner. However, the revocation, suspension, or
27 surrender of a certificate shall not affect the powers of the
28 commissioner as provided in this division.

29 (e) *Notwithstanding any other provision in this section, the*
30 *commissioner may by rule require a licensee to submit applications*
31 *to engage in business at a new location through the Nationwide*
32 *Mortgage Licensing System and Registry.*

33 *SEC. 26. Section 22108 of the Financial Code is amended to*
34 *read:*

35 22108. (a) The commissioner may by regulation require
36 licensees to file, at the times that he or she may specify, the
37 information that he or she may reasonably require regarding any
38 changes in the information provided in any application filed
39 pursuant to this division.

1 (b) *The commissioner may, by regulation, require a licensee to*
2 *file information through the Nationwide Mortgage Licensing*
3 *System and Registry.*

4 *SEC. 27. Section 22109 of the Financial Code is amended to*
5 *read:*

6 22109. (a) Upon reasonable notice and opportunity to be heard,
7 the commissioner may deny the application for any of the following
8 reasons:

9 (1) A false statement of a material fact has been made in the
10 application.

11 (2) The applicant or an officer, director, general partner, person
12 responsible for the applicant's lending activities in this state, or
13 person owning or controlling, directly or indirectly, 10 percent or
14 more of the outstanding interests or equity securities of the
15 applicant has, within the last 10 years, been convicted of or pleaded
16 nolo contendere to a crime, or committed an act involving
17 dishonesty, fraud, or deceit, if the crime or act is substantially
18 related to the qualifications, functions, or duties of a person
19 engaged in business in accordance with this division.

20 (3) The applicant or an officer, director, general partner, person
21 responsible for the applicant's lending activities in this state, or
22 person owning or controlling, directly or indirectly, 10 percent or
23 more of the outstanding interests or equity securities of the
24 applicant has violated any provision of this division or the rules
25 thereunder or any similar regulatory scheme of the State of
26 California or a foreign jurisdiction.

27 (4) *The applicant employs a mortgage loan originator who is*
28 *not licensed in this state.*

29 (b) The application shall be considered withdrawn within the
30 meaning of this section if the applicant fails to respond to a written
31 notification of a deficiency in the application within 90 days of
32 the date of the notification.

33 (c) The commissioner shall, within 60 days from the filing of
34 a full and complete application for a license with the fees, either
35 issue a license or file a statement of issues prepared in accordance
36 with Chapter 5 (commencing with Section 11500) of Part 1 of
37 Division 3 of Title 2 of the Government Code.

38 *SEC. 28. Section 22112 of the Financial Code is amended to*
39 *read:*

1 22112. (a) A licensee shall maintain a surety bond in
2 accordance with this subdivision in ~~the~~ *a minimum* amount of
3 twenty-five thousand dollars (\$25,000). The bond shall be payable
4 to the commissioner and issued by an insurer authorized to do
5 business in this state. An original surety bond, including any and
6 all riders and endorsements executed subsequent to the effective
7 date of the bond, shall be filed with the commissioner within 10
8 days of execution. For licensees with multiple licensed locations,
9 only one surety bond is required. The bond shall be used for the
10 recovery of expenses, fines, and fees levied by the commissioner
11 in accordance with this division or for losses or damages incurred
12 by borrowers or consumers as the result of a licensee's
13 noncompliance with the requirements of this division.

14 (b) When an action is commenced on a licensee's bond, the
15 commissioner may require the filing of a new bond. Immediately
16 upon recovery of any action on the bond, the licensee shall file a
17 new bond. Failure to file a new bond within 10 days of the recovery
18 on a bond, or within 10 days after notification by the commissioner
19 that a new bond is required, constitutes sufficient grounds for the
20 suspension or revocation of the license.

21 (c) *The commissioner shall by regulation require a higher bond*
22 *amount for a licensee employing one or more mortgage loan*
23 *originators, based upon the dollar amount of residential mortgage*
24 *loans originated by that licensee and any mortgage loan*
25 *originators employed by the licensee. Every mortgage loan*
26 *originator employed by the licensee shall be covered by the surety*
27 *bond, unless another bond or recovery fund is in place that covers*
28 *the activities of a mortgage loan originator employed by the*
29 *licensee.*

30 *SEC. 29. Section 22153 of the Financial Code is amended to*
31 *read:*

32 22153. (a) If a licensee desires to change its place of business
33 to a street address other than that designated in its license, the
34 licensee shall give written notice to the commissioner on a form
35 provided by the commissioner at least 10 days prior to the change.
36 The commissioner shall then provide a written approval of the
37 change and the date of the approval.

38 (b) If notice is not given at least 10 days prior to the change of
39 a street address of a place of business, as required by subdivision
40 (a), or notice is not given at least 10 days prior to engaging in

1 business at a new location, as required by Section 22102, the
2 commissioner may assess a civil or administrative penalty on the
3 licensee not to exceed five hundred dollars (\$500).

4 (c) *The commissioner may by regulation require a licensee to*
5 *provide notice of the change through the Nationwide Mortgage*
6 *Licensing System and Registry.*

7 *SEC. 30. Section 22165 of the Financial Code is amended to*
8 *read:*

9 22165. No advertising copy shall be used *until* after its use has
10 been ~~disapproved~~ *approved* by the commissioner and the licensee
11 is notified in writing of the ~~disapproval~~ *approval*.

12 *SEC. 31. Section 22166 of the Financial Code is amended to*
13 *read:*

14 22166. The commissioner ~~may~~ *shall* require licensees to
15 maintain a file of all advertising copy for a period of 90 days from
16 the date of its use. The file shall be available to the commissioner
17 upon request.

18 *SEC. 32. Section 22166.5 is added to the Financial Code, to*
19 *read:*

20 22166.5. (a) *Each licensee, prior to the use of any proposed*
21 *advertisements with regard to the business subject to this division*
22 *shall submit a true copy thereof to the commissioner for approval.*

23 (b) *If the commissioner, within 10 business days of receipt of*
24 *the advertising copy, determines that the advertising does not*
25 *comply with the requirements of this chapter or appropriate*
26 *regulations, the commissioner shall notify the licensee in writing*
27 *that the advertising is disapproved.*

28 *SEC. 33. Section 22170 of the Financial Code is amended to*
29 *read:*

30 22170. (a) It is unlawful for any person to knowingly alter,
31 destroy, mutilate, conceal, cover up, falsify, or make a false entry
32 in any record, document, or tangible object with the intent to
33 impede, obstruct, or influence the administration or enforcement
34 of any provision of this division.

35 (b) It is unlawful for any person to knowingly make an untrue
36 statement to the commissioner *or the Nationwide Mortgage*
37 *Licensing System and Registry* during the course of licensing,
38 investigation, or examination, with the intent to impede, obstruct,
39 or influence the administration or enforcement of any provision
40 of this division.

1 *SEC. 34. Section 22180 is added to the Financial Code, to*
2 *read:*

3 22180. (a) *Every licensee engaged in the business of making*
4 *or brokering residential mortgage loans shall establish a record*
5 *with the Nationwide Mortgage Licensing System and Registry.*

6 (b) *Every licensee engaging in the business of making or*
7 *brokering residential mortgage loans shall require and ensure*
8 *that every mortgage loan originator employed or compensated by*
9 *the licensee is licensed or registered as a mortgage loan originator*
10 *under this division or another provision of law in this state that*
11 *meets the requirements of Section 1508(d) of Title V of the Secure*
12 *and Fair Enforcement for Mortgage Licensing Act of 2008 (Public*
13 *Law 110-289), and is licensed or registered through the Nationwide*
14 *Mortgage Licensing System and Registry.*

15 (c) *A licensee engaged in the business of making or brokering*
16 *residential mortgage loans may not make or broker a loan that*
17 *was offered by, negotiated by, or applied for through, a mortgage*
18 *loan originator not licensed or registered through the Nationwide*
19 *Mortgage Licensing System and Registry.*

20 *SEC. 35. Section 22181 is added to the Financial Code, to*
21 *read:*

22 22181. (a) *An individual shall not engage in the business of*
23 *a mortgage loan originator with respect to any dwelling located*
24 *in this state without first obtaining and maintaining annually a*
25 *mortgage loan originator license. Each licensed mortgage loan*
26 *originator shall register with and maintain a valid unique identifier*
27 *issued by the Nationwide Mortgage Licensing System and Registry.*

28 (b) *The following are exempt from the provisions of subdivision*
29 (i):

30 (1) *Registered mortgage loan originators, when acting for an*
31 *entity described in paragraph (1), (2), or (3) of subdivision (a) of*
32 *Section 22020.*

33 (2) *Any individual who offers or negotiates terms of a residential*
34 *mortgage loan with or on behalf of an immediate family member*
35 *of the individual.*

36 (3) *Any individual who offers or negotiates terms of a residential*
37 *mortgage loan secured by a dwelling that served as the individual's*
38 *residence.*

39 (4) *A licensed attorney who negotiates the terms of a residential*
40 *mortgage loan on behalf of a client as an ancillary matter to the*

1 attorney's representation of the client, unless the attorney is
2 compensated by a lender, a mortgage broker, or other mortgage
3 loan originator, or by any agent of the lender, mortgage broker,
4 or other mortgage loan originator.

5 (5) A residential mortgage lender licensed by the Department
6 of Corporations under the California Residential Mortgage
7 Lending Act, and every licensed mortgage loan originator
8 employed by that licensee who is registered with the Nationwide
9 Mortgage Licensing System and Registry.

10 (c) A loan processor or underwriter who is an independent
11 contractor shall not engage in the activities of a loan processor
12 or underwriter unless the independent contractor loan processor
13 or underwriter obtains and maintains a license under Section
14 22181. Each independent contractor loan processor or underwriter
15 licensed as a mortgage loan originator shall have and maintain
16 a valid unique identifier issued by the Nationwide Mortgage
17 Licensing System and Registry.

18 (d) The commissioner may establish licensing rules or
19 regulations and interim procedures for licensing and acceptance
20 of applications.

21 SEC. 36. Section 22182 is added to the Financial Code, to
22 read:

23 22182. (a) An applicant for a license as a mortgage loan
24 originator shall apply through the submission of the uniform form
25 prescribed by the Nationwide Mortgage Licensing System and
26 Registry. The commissioner may require the submission of
27 additional information or supporting documentation.

28 (b) At the time of filing the application, the applicant shall pay
29 to the commissioner the sum of one hundred dollars (\$100) as an
30 application fee for processing the application and investing the
31 applicant. The application and investigation fee are not refundable
32 if an application is denied or withdrawn.

33 (c) The commissioner may establish relationships or contracts
34 with the Nationwide Mortgage Licensing System and Registry or
35 other entities designated by the Nationwide Mortgage Licensing
36 System and Registry to collect and maintain records and process
37 transaction fees or other fees related to licensees or other persons
38 subject to the Secure and Fair Enforcement for Mortgage Licensing
39 Act of 2008 (Public Law 110-289).

1 (d) For the purpose of participating in the Nationwide Mortgage
2 Licensing System and Registry, the commissioner may modify, in
3 whole or in part, by rule, regulation, or order, any or all of the
4 requirements of this division and to establish new requirements
5 as reasonably necessary to participate in the Nationwide Mortgage
6 Licensing System and Registry.

7 (e) In connection with an application for licensing as a mortgage
8 loan originator, an applicant shall, at a minimum, furnish to the
9 Nationwide Mortgage Licensing System and Registry information
10 concerning the applicant's identity, including the following:

11 (1) Fingerprints for submission to the Federal Bureau of
12 Investigation, and any governmental agency or entity authorized
13 to receive that information for a state, national, and international
14 criminal history background check.

15 (2) Personal history and experience in a form prescribed by the
16 Nationwide Mortgage Licensing System and Registry, including
17 the submission of authorization for the Nationwide Mortgage
18 Licensing System and Registry and the commissioner to obtain the
19 following:

20 (A) An independent credit report obtained from a consumer
21 reporting agency described in Section 603(p) of the federal Fair
22 Credit Reporting Act (Public Law 91-900).

23 (B) Information related to any administrative, civil, or criminal
24 findings by any governmental jurisdiction.

25 (f) The commissioner may use the Nationwide Mortgage
26 Licensing System and Registry as a channeling agent for requesting
27 information from, and distributing information to, the Department
28 of Justice or any governmental agency, and for requesting and
29 distributing information to and from any source so directed by the
30 commissioner.

31 SEC. 37. Section 22183 is added to the Financial Code, to
32 read:

33 22183. The commissioner shall not issue a mortgage loan
34 originator license unless the commissioner makes at a minimum
35 the following findings:

36 (a) The applicant has never had a mortgage loan originator
37 license revoked in any governmental jurisdiction, except that a
38 subsequent formal rescission of the revocation shall not be deemed
39 a revocation.

1 (b) *The applicant has not been convicted of, or pled guilty or*
2 *nolo contendere to, a felony in a domestic, foreign, or military*
3 *court during the seven-year period preceding the date of the*
4 *application for licensing and registration, or at any time preceding*
5 *the date of application, if the felony involved an act of fraud,*
6 *dishonesty, a breach of trust, or money laundering. For purposes*
7 *of this subdivision, any pardon of a conviction shall not be a*
8 *conviction.*

9 (c) (1) *The applicant has demonstrated financial responsibility,*
10 *character, and general fitness such as to command the confidence*
11 *of the community and to warrant a determination that the mortgage*
12 *loan originator will operate honestly, fairly, and efficiently within*
13 *the purposes of the Secure and Fair Enforcement for Mortgage*
14 *Licensing Act of 2008 (Public Law 110-289).*

15 (2) *For purposes of this subdivision, a person has shown that*
16 *he or she is not financially responsible when he or she has shown*
17 *a disregard in the management of his or her own financial*
18 *condition. A determination that an individual has not shown*
19 *financial responsibility may include, but not be limited to, the*
20 *following:*

21 (A) *Current outstanding judgments, except judgments solely as*
22 *a result of medical expenses.*

23 (B) *Current outstanding tax liens or other government liens and*
24 *filings.*

25 (C) *Foreclosures within the past three years.*

26 (D) *A pattern of seriously delinquent accounts within the past*
27 *three years.*

28 (d) *The applicant has completed the prelicensing education*
29 *requirement described in Section 22184.*

30 (e) *The applicant has passed a written test that meets the test*
31 *requirement described in Section 22185.*

32 (f) *The surety bond of the finance lender or broker employing*
33 *or intending to employ the applicant covers the activities of the*
34 *applicant, or the applicant is otherwise covered by a bond or*
35 *recovery fund.*

36 SEC. 38. *Section 22184 is added to the Financial Code, to*
37 *read:*

38 22184. (a) *In order to meet the prelicensing education*
39 *requirement referred to in subdivision (d) of Section 22183, an*
40 *individual shall complete at least 20 hours of education approved*

1 *in accordance with subdivision (b) of this section, which shall*
2 *include at least the following:*

3 *(1) Three hours of education relating to relevant federal law*
4 *and regulations.*

5 *(2) Three hours of education relating to relevant state law and*
6 *regulations.*

7 *(3) Three hours of education on ethics, which shall include*
8 *instruction on fraud, consumer protection, and fair lending issues.*

9 *(4) Two hours of training related to lending standards for the*
10 *nontraditional mortgage product marketplace.*

11 *(b) For purposes of subdivision (a), prelicensing education*
12 *courses shall be reviewed and approved by the Nationwide*
13 *Mortgage Licensing System and Registry. Review and approval*
14 *of a prelicensing education course shall include review and*
15 *approval of the course provider.*

16 *(c) Nothing in this section shall preclude any prelicensing*
17 *education course, as approved by the Nationwide Mortgage*
18 *Licensing System and Registry, that is provided by the employer*
19 *of the applicant or an entity that is affiliated with the applicant by*
20 *an agency contract or any subsidiary or affiliate of the employer*
21 *or entity.*

22 *(d) Prelicensing education may be offered either in a classroom,*
23 *online, or by any other means approved by the Nationwide*
24 *Mortgage Licensing System and Registry.*

25 *(e) The completion in another state of prelicensing education*
26 *requirements set forth in paragraphs (1), (2), and (3) of subdivision*
27 *(a), that have been approved by the Nationwide Mortgage*
28 *Licensing System and Registry, shall be accepted as credit towards*
29 *completion of prelicensing education requirements in this state.*

30 *SEC. 39. Section 22185 is added to the Financial Code, to*
31 *read:*

32 *22185. (a) In order to meet the written test requirement*
33 *referred to in subdivision (e) of Section 22183, an individual shall*
34 *pass, in accordance with the standards established under this*
35 *section, a qualified written test developed by the Nationwide*
36 *Mortgage Licensing System and Registry and administered by a*
37 *test provider approved by the Nationwide Mortgage Licensing*
38 *System and Registry.*

39 *(b) A written test shall not be treated as a qualified written test*
40 *for purposes of subdivision (a) unless the test adequately measures*

1 *the applicant's knowledge and comprehension in appropriate*
2 *subject areas, including the following:*

3 (1) *Ethics.*

4 (2) *Federal law and regulation relating to mortgage origination.*

5 (3) *State law and regulation relating to mortgage origination.*

6 (4) *Federal and state law and regulation, including instruction*
7 *on fraud, consumer protection, the nontraditional mortgage*
8 *marketplace, and fair lending issues.*

9 (c) *Nothing in this section shall prohibit a test provider approved*
10 *by the Nationwide Mortgage Licensing System and Registry from*
11 *providing a test at the location of the employer of the applicant or*
12 *the location of any subsidiary or affiliate of the employer of the*
13 *applicant, or the location of any entity with which the applicant*
14 *holds an exclusive arrangement to conduct the business of a*
15 *mortgage loan originator.*

16 (d) *The following shall apply to the test described in this section:*

17 (1) *An individual shall not be considered to have passed a*
18 *qualified written test unless the individual achieves a test score of*
19 *not less than 75 percent correct answers to questions.*

20 (2) *An individual may retake a test three consecutive times with*
21 *each consecutive taking occurring at least 30 days after the*
22 *preceding test.*

23 (3) *After failing three consecutive tests, an individual shall wait*
24 *at least six months before taking the test again.*

25 (4) *A licensed mortgage loan originator who fails to maintain*
26 *a valid license for a period of five years or longer shall retake the*
27 *test, not taking into account any time during which the individual*
28 *is a registered mortgage loan originator.*

29 SEC. 40. *Section 22186 is added to the Financial Code, to*
30 *read:*

31 22186. *Each mortgage loan originator shall submit to the*
32 *Nationwide Mortgage Licensing System and Registry reports of*
33 *condition, which shall be in the form and shall contain that*
34 *information as the Nationwide Mortgage Licensing System and*
35 *Registry may require. The commissioner may by regulation require*
36 *a finance lender or broker engaged in the business of making or*
37 *brokering residential mortgage loans to submit the reports to the*
38 *Nationwide Mortgage Licensing System and Registry on behalf of*
39 *the mortgage loan originators employed by the lender or broker.*

1 *SEC. 41. Section 22187 is added to the Financial Code, to*
2 *read:*

3 *22187. (a) The minimum standards for license renewal for*
4 *mortgage loan originators shall include the following:*

5 *(1) The mortgage loan originator continues to meet the minimum*
6 *standards for license issuance under Section 22183.*

7 *(2) The mortgage loan originator has satisfied the annual*
8 *continuing education requirements described in Section 22188.*

9 *(3) The mortgage loan originator has paid all required fees for*
10 *renewal of the license.*

11 *(b) The license of a mortgage loan originator failing to satisfy*
12 *the minimum standards for license renewal shall expire. The*
13 *commissioner may adopt procedures for the reinstatement of*
14 *expired licenses consistent with the standards established by the*
15 *Nationwide Mortgage Licensing System and Registry.*

16 *SEC. 42. Section 22188 is added to the Financial Code, to*
17 *read:*

18 *22188. (a) In order to meet the annual continuing education*
19 *requirements referred to in paragraph (2) of subdivision (a) of*
20 *Section 22187, a licensed mortgage loan originator shall complete*
21 *at least eight hours of education approved in accordance with*
22 *subdivision (b), which shall include at least the following:*

23 *(1) Three hours of federal law and regulations.*

24 *(2) One hour of state law and regulations.*

25 *(3) Two hours of ethics, which shall include instruction on fraud,*
26 *consumer protection, and fair lending issues.*

27 *(4) Two hours of training related to lending standards for the*
28 *nontraditional mortgage product marketplace.*

29 *(b) For purposes of subdivision (a), continuing education*
30 *courses shall be reviewed and approved by the Nationwide*
31 *Mortgage Licensing System and Registry. Review and approval*
32 *of a continuing education course shall include review and approval*
33 *of the course provider.*

34 *(c) Nothing in this section shall preclude any education course,*
35 *as approved by the Nationwide Mortgage Licensing System and*
36 *Registry, that is provided by the employer of the mortgage loan*
37 *originator or an entity which is affiliated with the mortgage loan*
38 *originator by an agency contract, or any subsidiary or affiliate of*
39 *that employer or entity.*

1 (d) Continuing education may be offered either in a classroom,
2 online, or by any other means approved by the Nationwide
3 Mortgage Licensing System and Registry.

4 (e) Except as provided in Section 22187 and subdivision (i), a
5 mortgage loan originator may only receive credit for a continuing
6 education course in the year in which the course is taken, and a
7 mortgage loan originator may not take the same approved course
8 in the same or successive years to meet the annual requirements
9 for continuing education.

10 (f) A licensed mortgage loan originator who is an approved
11 instructor of an approved continuing education course may receive
12 credit for the licensed mortgage loan originator's own annual
13 continuing education requirement at the rate of two hours credit
14 for every one hour taught.

15 (g) The successful completion of the education requirements
16 approved by the Nationwide Mortgage Licensing System and
17 Registry under paragraphs (1), (2), and (3) of subdivision (a) in
18 another state shall be accepted as credit towards completion of
19 continuing education requirements in this state.

20 (h) A licensed mortgage loan originator who subsequently
21 becomes unlicensed shall complete the continuing education
22 requirements for the last year in which the license was held prior
23 to issuance of a new or renewed license.

24 (i) An individual meeting the requirements of paragraphs (1)
25 and (3) of subdivision (a) of Section 22187 may correct any
26 deficiency in continuing education as established by rule or
27 regulation of the commissioner.

28 SEC. 43. Section 22189 is added to the Financial Code, to
29 read:

30 22189. The commissioner shall participate in the Nationwide
31 Mortgage Licensing System and Registry, and may establish, by
32 regulation or order, requirements as necessary for participation,
33 including, but not limited to, the following:

34 (a) Background checks for any of the following:

35 (1) Criminal history through fingerprints or other databases.

36 (2) Civil or administrative records.

37 (3) Credit history.

38 (4) Any other information as deemed necessary by the
39 Nationwide Mortgage Licensing System and Registry.

1 (b) *The payment of fees to apply for or renew licenses through*
2 *the Nationwide Mortgage Licensing System and Registry.*

3 (c) *The setting or resetting as necessary of renewal or reporting*
4 *dates.*

5 (d) *Requirements for amending or surrendering a license or*
6 *any other activities as the commissioner deems necessary for*
7 *participation in the Nationwide Mortgage Licensing System and*
8 *Registry.*

9 SEC. 44. *Section 22190 is added to the Financial Code, to*
10 *read:*

11 22190. *The commissioner shall regularly report violations of*
12 *this division by persons engaged in the business of making or*
13 *brokering residential mortgage loans, or by mortgage loan*
14 *originators, as well as enforcement actions and other relevant*
15 *information, to the Nationwide Mortgage Licensing System and*
16 *Registry.*

17 SEC. 45. *Section 22191 is added to the Financial Code, to*
18 *read:*

19 22191. *The commissioner shall establish a process whereby*
20 *mortgage loan originators may challenge information entered into*
21 *the Nationwide Mortgage Licensing System and Registry by the*
22 *commissioner.*

23 SEC. 46. *Section 22192 is added to the Financial Code, to*
24 *read:*

25 22192. (a) *The commissioner may do any of the following:*

26 (1) *Deny, suspend, revoke, condition, or decline to renew a*
27 *mortgage loan originator license for a violation of this division,*
28 *or any rules or regulations adopted under this division.*

29 (2) *Deny, suspend, revoke, condition, or decline to renew a*
30 *mortgage loan originator license if an applicant or licensee fails*
31 *at any time to meet the requirements of Section 22183 or 22187,*
32 *or withholds information or makes a material misstatement in an*
33 *application for a license or renewal of a license.*

34 (3) *Order restitution against a mortgage loan originator or any*
35 *finance lender or broker licensee employing a mortgage loan*
36 *originator for violations of this division.*

37 (4) *Impose fines on a mortgage loan originator or any finance*
38 *lender or broker licensee employing a mortgage loan originator*
39 *pursuant to subdivisions (b), (c), and (d).*

40 (5) *Issue orders or directives under this division as follows:*

1 (A) Order or direct a mortgage loan originator or any finance
2 lender or broker licensee employing a mortgage loan originator
3 to cease and desist from conducting business, including immediate
4 temporary orders to cease and desist.

5 (B) Order or direct a mortgage loan originator or any finance
6 lender or broker licensee employing a mortgage loan originator
7 to cease any harmful activities or violations of this division,
8 including immediate temporary orders to cease and desist.

9 (C) Enter immediate temporary orders to cease business under
10 a license issued pursuant to the authority granted under Section
11 22181 if the commissioner determines that the license was
12 erroneously granted or the licensee is currently in violation of this
13 division.

14 (D) Order or direct any other affirmative action as the
15 commissioner deems necessary.

16 (b) The commissioner may impose a civil penalty on a mortgage
17 loan originator or any finance lender or broker licensee employing
18 a mortgage loan originator, if the commissioner finds, on the
19 record after notice and opportunity for hearing, that the mortgage
20 loan originator or any finance lender or broker licensee employing
21 a mortgage loan originator has violated or failed to comply with
22 any requirement of this division or any regulation prescribed by
23 the commissioner under this division or order issued under
24 authority of this division.

25 (c) The maximum amount of penalty for each act or omission
26 described in subdivision (b) shall be twenty-five thousand dollars
27 (\$25,000).

28 (d) Each violation or failure to comply with any directive or
29 order of the commissioner is a separate and distinct violation or
30 failure.

31 SEC. 47. Section 22193 is added to the Financial Code, to
32 read:

33 22193. (a) Except as otherwise provided in Section 1512 of
34 the Secure and Fair Enforcement for Mortgage Licensing Act of
35 2008 (Public Law 110-289), any requirement under federal or
36 state law regarding the privacy or confidentiality of any
37 information or material provided to the Nationwide Mortgage
38 Licensing System and Registry, and any privilege arising under
39 federal or state law, including the rules of any federal or state
40 court with respect to the information or material, shall continue

1 to apply to the information or material after the information or
2 material has been disclosed to the Nationwide Mortgage Licensing
3 System and Registry. The information and material may be shared
4 with all state and federal regulatory officials with mortgage
5 industry oversight authority without the loss of privilege or the
6 loss of confidentiality protections provided by federal or state law.

7 (b) To promote more effective regulation and reduce regulatory
8 burden through supervisory information sharing, the commissioner
9 may enter into agreements or sharing arrangements with other
10 governmental agencies, the Conference of State Bank Supervisors,
11 the American Association of Residential Mortgage Regulators, or
12 other associations representing governmental agencies as
13 established by rule, regulation, or order of the commissioner.

14 (c) Information or material that is subject to a privilege or
15 confidentiality under subdivision (a) shall not be subject to the
16 following:

17 (1) Disclosure under any state law governing the disclosure to
18 the public of information held by an officer or an agency of the
19 state.

20 (2) Subpoena or discovery, or admission into evidence, in any
21 private civil action or administrative process, unless with respect
22 to any privilege held by the Nationwide Mortgage Licensing System
23 and Registry with respect to that information or material, the
24 person to whom the information or material pertains waives, in
25 whole or in part, in the discretion of the person, that privilege.

26 (d) Any state law relating to the disclosure of confidential
27 supervisory information or any information or material provided
28 to the Nationwide Mortgage Licensing System and Registry that
29 is inconsistent with subdivision (a) shall be superseded by the
30 requirements of this section.

31 (e) This section shall not be applicable to the information or
32 material relating to the employment history of, and publicly
33 adjudicated disciplinary and enforcement actions against,
34 mortgage loan originators that is included in the Nationwide
35 Mortgage Licensing System and Registry for access by the public.

36 SEC. 48. Section 22194 is added to the Financial Code, to
37 read:

38 22194. The unique identifier of any person originating a
39 residential mortgage loan shall be clearly shown on all residential
40 mortgage loan application forms, solicitations or advertisements,

1 *including business cards or Internet Web sites, and any other*
2 *documents as established by rule, regulation, or order of the*
3 *commissioner.*

4 *SEC. 49. Section 50002 of the Financial Code is amended to*
5 *read:*

6 50002. (a) No person shall engage in the business of making
7 residential mortgage loans or servicing residential mortgage loans,
8 in this state, without first obtaining a license from the commissioner
9 in accordance with the requirements of Chapter 2 (commencing
10 with Section 50120) or Chapter 3 (commencing with Section
11 50130), and any rules promulgated by the commissioner under
12 this law, unless a person or transaction is excepted from a definition
13 or exempt from licensure by a provision of this law or a rule of
14 the commissioner.

15 (b) An employee of a licensee or of a person exempt from
16 licensure is not required to be licensed when acting within the
17 scope of his or her employment and shall be exempt from any
18 other law from which his or her employer is exempt, *unless he or*
19 *she meets the definition of a mortgage loan originator under*
20 *subdivision (u) of Section 50003.*

21 *SEC. 50. Section 50003 of the Financial Code is amended to*
22 *read:*

23 50003. (a) “Annual audit” means a certified audit of the
24 licensee’s books, records, and systems of internal control performed
25 by an independent certified public accountant in accordance with
26 generally accepted accounting principles and generally accepted
27 auditing standards.

28 (b) “Borrower” means the loan applicant.

29 (c) “Buy” includes exchange, offer to buy, or solicitation to
30 buy.

31 (d) “Commissioner” means the Commissioner of Corporations.

32 (e) “Control” means the possession, directly or indirectly, of
33 the power to direct, or cause the direction of, the management and
34 policies of a licensee under this division, whether through voting
35 or through the ownership of voting power of an entity that
36 possesses voting power of the licensee, or otherwise. Control is
37 presumed to exist if a person, directly or indirectly, owns, controls,
38 or holds 10 percent or more of the voting power of a licensee or
39 of an entity that owns, controls, or holds, with power to vote, 10
40 percent or more of the voting power of a licensee. No person shall

1 be deemed to control a licensee solely by reason of his or her status
2 as an officer or director of the licensee.

3 (f) *“Depository institution” has the same meaning as in Section*
4 *3 of the Federal Deposit Insurance Act, and includes any credit*
5 *union.*

6 (f)

7 (g) “Engage in the business” means the dissemination to the
8 public, or any part of the public, by means of written, printed, or
9 electronic communication or any communication by means of
10 recorded telephone messages or spoken on radio, television, or
11 similar communications media, of any information relating to the
12 making of residential mortgage loans, the servicing of residential
13 mortgage loans, or both. “Engage in the business” also means,
14 without limitation, making residential mortgage loans or servicing
15 residential mortgage loans, or both.

16 (g)

17 (h) “Exempt person” means any of the following:

18 (1) Any bank, trust company, insurance company, or industrial
19 loan company doing business under the authority of or in
20 accordance with a license, certificate, or charter issued by the
21 United States or any state, district, territory, or commonwealth of
22 the United States that is authorized to transact business in this
23 state.

24 (2) A federally chartered savings and loan association, federal
25 savings bank, or federal credit union that is authorized to transact
26 business in this state.

27 (3) A savings and loan association, savings bank, or credit union
28 organized under the laws of this or any other state that is authorized
29 to transact business in this state.

30 (4) A person engaged solely in business, commercial, or
31 agricultural mortgage lending.

32 (5) A wholly owned service corporation of a savings and loan
33 association or savings bank organized under the laws of this state
34 or the wholly owned service corporation of a federally chartered
35 savings and loan association or savings bank that is authorized to
36 transact business in this state.

37 ~~(6) Any person making residential mortgage loans with his, her,~~
38 ~~or its own funds for his, her, or its own investment without intent~~
39 ~~to resell more than eight residential loans in any one calendar year.~~

40 (7)

- 1 (6) An agency, or other instrumentality of the federal
2 government, or state or municipal government.
- 3 ~~(8)~~
- 4 (7) An employee or employer pension plan making residential
5 mortgage loans only to its participants, or a person making those
6 loans only to its employees or the employees of a holding company,
7 owner who controls that person, affiliate, or subsidiary of that
8 person.
- 9 ~~(9)~~
- 10 (8) A person acting in a fiduciary capacity conferred by the
11 authority of a court.
- 12 ~~(10)~~
- 13 (9) A real estate broker licensed *as a mortgage loan originator*
14 *under California law and registered with the Nationwide Mortgage*
15 *Licensing System*, when making, arranging, selling, or servicing
16 a residential loan.
- 17 ~~(11)~~
- 18 (10) A California finance lender licensed under Division 9
19 (commencing with Section 22000), when acting under the authority
20 of that license.
- 21 ~~(12)~~
- 22 (11) A trustee under a deed of trust pursuant to the Civil Code,
23 when collecting delinquent loan payments, interest, or other loan
24 amounts, or performing other acts in a judicial or nonjudicial
25 foreclosure proceeding.
- 26 (i) *“Federal banking agencies” means the Board of Governors*
27 *of the Federal Reserve System, the Comptroller of the Currency,*
28 *the Director of the Office of Thrift Supervision, the National Credit*
29 *Union Administration, and the Federal Deposit Insurance*
30 *Corporation.*
- 31 (j) *“Immediate family member” means a spouse, child, sibling,*
32 *parent, grandparent, or grandchild. This includes stepparents,*
33 *stepchildren, stepsiblings, and adoptive relationships.*
- 34 (k) *“Individual” means a natural person.*
- 35 ~~(h)~~
- 36 (l) *“In this state” means any activity of a person relating to*
37 *making or servicing a residential mortgage loan that originates*
38 *from this state and is directed to persons outside this state, or that*
39 *originates from outside this state and is directed to persons inside*
40 *this state, or that originates inside this state and is directed to*

1 persons inside this state, or that leads to the formation of a contract
2 and the offer or acceptance thereof is directed to a person in this
3 state (whether from inside or outside this state and whether the
4 offer was made inside or outside the state).

5 (i)

6 (m) “Institutional investor” means the following:

7 (1) The United States or any state, district, territory, or
8 commonwealth thereof, or any city, county, city and county, public
9 district, public authority, public corporation, public entity, or
10 political subdivision of a state, district, territory, or commonwealth
11 of the United States, or any agency or other instrumentality of any
12 one or more of the foregoing, including, by way of example, the
13 Federal National Mortgage Association and the Federal Home
14 Loan Mortgage Corporation.

15 (2) Any bank, trust company, savings bank or savings and loan
16 association, credit union, industrial bank or industrial loan
17 company, personal property broker, consumer finance lender,
18 commercial finance lender, or insurance company, or subsidiary
19 or affiliate of one of the preceding entities, doing business under
20 the authority of or in accordance with a license, certificate, or
21 charter issued by the United States or any state, district, territory,
22 or commonwealth of the United States.

23 (3) Trustees of pension, profit-sharing, or welfare funds, if the
24 pension, profit-sharing, or welfare fund has a net worth of not less
25 than fifteen million dollars (\$15,000,000), except pension,
26 profit-sharing, or welfare funds of a licensee or its affiliate,
27 self-employed individual retirement plans, or individual retirement
28 accounts.

29 (4) A corporation or other entity with outstanding securities
30 registered under Section 12 of the Securities Exchange Act of 1934
31 or a wholly owned subsidiary of that corporation or entity, provided
32 that the purchaser represents either of the following:

33 (A) That it is purchasing for its own account for investment and
34 not with a view to, or for sale in connection with, any distribution
35 of a promissory note.

36 (B) That it is purchasing for resale pursuant to an exemption
37 under Rule 144A (17 C.F.R. 230.144A) of the Securities and
38 Exchange Commission.

39 (5) An investment company registered under the Investment
40 Company Act of 1940; or a wholly owned and controlled subsidiary

1 of that company, provided that the purchaser makes either of the
2 representations provided in paragraph (4).

3 (6) A person licensed to make residential mortgage loans under
4 this law or an affiliate or subsidiary of that person.

5 (7) Any person who is licensed as a securities broker or
6 securities dealer under any law of this state, or of the United States,
7 or any employee, officer or agent of that person, if that person is
8 acting within the scope of authority granted by that license or an
9 affiliate or subsidiary controlled by that broker or dealer, in
10 connection with a transaction involving the offer, sale, purchase,
11 or exchange of one or more promissory notes secured directly or
12 indirectly by liens on real property or a security representing an
13 ownership interest in a pool of promissory notes secured directly
14 or indirectly by liens on real property, and the offer and sale of
15 those securities is qualified under the California Corporate
16 Securities Law of 1968 or registered under federal securities laws,
17 or exempt from qualification or registration.

18 (8) A licensed real estate broker selling the loan to an
19 institutional investor specified in paragraphs (1) to (7), inclusive,
20 or paragraph (9) or (10).

21 (9) A business development company as defined in Section
22 2(a)(48) of the Investment Company Act of 1940 or a Small
23 Business Investment Company licensed by the United States Small
24 Business Administration under Section 301(c) or (d) of the Small
25 Business Investment Act of 1958.

26 (10) A syndication or other combination of any of the foregoing
27 entities that is organized to purchase a promissory note.

28 (11) A trust or other business entity established by an
29 institutional investor for the purpose of issuing or facilitating the
30 issuance of securities representing undivided interests in, or rights
31 to receive payments from or to receive payments primarily from,
32 a pool of financial assets held by the trust or business entity,
33 provided that all of the following apply:

34 (A) The business entity is not a sole proprietorship.

35 (B) The pool of assets consists of one or more of the following:

36 (i) Interest-bearing obligations.

37 (ii) Other contractual obligations representing the right to receive
38 payments from the assets.

39 (iii) Surety bonds, insurance policies, letters of credit, or other
40 instruments providing credit enhancement for the assets.

1 (C) The securities will be either one of the following:

2 (i) Rated as “investment grade” by Standard and Poor’s
3 Corporation or Moody’s Investors Service, Inc. “Investment grade”
4 means that the securities will be rated by Standard and Poor’s
5 Corporation as AAA, AA, A, or BBB or by Moody’s Investors
6 Service, Inc. as Aaa, Aa, A, or Baa, including any of those ratings
7 with “+” or “—” designation or other variations that occur within
8 those ratings.

9 (ii) Sold to an institutional investor.

10 (D) The offer and sale of the securities is qualified under the
11 California Corporate Securities Law of 1968 or registered under
12 federal securities laws, or exempt from qualification or registration.

13 ~~(j)~~

14 (n) “Institutional lender” means the following:

15 (1) The United States or any state, district, territory, or
16 commonwealth thereof, or any city, county, city and county, public
17 district, public authority, public corporation, public entity, or
18 political subdivision of a state, district, territory, or commonwealth
19 of the United States, or any agency or other instrumentality of any
20 one or more of the foregoing, including, by way of example, the
21 Federal National Mortgage Association and the Federal Home
22 Loan Mortgage Corporation.

23 (2) Any bank, trust company, savings bank or savings and loan
24 association, credit union, industrial loan company, or insurance
25 company, or service or investment company that is wholly owned
26 and controlled by one of the preceding entities, doing business
27 under the authority of and in accordance with a license, certificate,
28 or charter issued by the United States or any state, district, territory,
29 or commonwealth of the United States.

30 (3) Any corporation with outstanding securities registered under
31 Section 12 of the Securities Exchange Act of 1934 or any wholly
32 owned subsidiary of that corporation.

33 (4) A person licensed to make residential mortgage loans under
34 this law.

35 ~~(k)~~

36 (o) “Law” means the California Residential Mortgage Lending
37 Act.

38 ~~(t)~~

39 (p) “Lender” means a person that (1) is an approved lender for
40 the Federal Housing Administration, Veterans Administration,

1 Farmers Home Administration, Government National Mortgage
2 Association, Federal National Mortgage Association, or Federal
3 Home Loan Mortgage Corporation, (2) directly makes residential
4 mortgage loans, and (3) makes the credit decision in the loan
5 transactions.

6 ~~(m)~~

7 (q) “Licensee” means, depending on the context, a person
8 licensed under either Chapter 2 (commencing with Section 50120)
9 or Chapter 3 (commencing with Section 50130).

10 (r) “*Loan processor or underwriter*” means either of the
11 following:

12 (1) *An individual who performs clerical or support duties as an*
13 *employee at the direction of and subject to the supervision and*
14 *instruction of a person licensed, or exempt from licensing under*
15 *Sections 50110 to 50110.6, inclusive. For purposes of this*
16 *paragraph, “clerical or support duties” may include the following,*
17 *subsequent to the receipt of an application:*

18 (A) *The receipt, collection, distribution, and analysis of*
19 *information common for the processing or underwriting of a*
20 *residential mortgage loan.*

21 (B) *Communicating with a consumer to obtain the information*
22 *necessary for the processing or underwriting of a loan, to the*
23 *extent that the communication does not include offering or*
24 *negotiating loan rates or terms, or counseling consumers about*
25 *residential mortgage loan rates or terms.*

26 (2) *An individual engaging solely in loan processor or*
27 *underwriter activities, shall not represent to the public, through*
28 *advertising or other means of communicating or providing*
29 *information including the use of business cards, stationery,*
30 *brochures, signs, rate lists, or other promotional items, that the*
31 *individual can or will perform any of the activities of a mortgage*
32 *loan originator.*

33 (s) “*Makes or making residential mortgage loans*” or “*mortgage*
34 *lending*” means *processing, underwriting, or as a lender using or*
35 *advancing one’s own funds, or making a commitment to advance*
36 *one’s own funds, to a loan applicant for a residential mortgage*
37 *loan.*

38 ~~(n)~~

39 (t) “*Makes or making residential mortgage loans*” or “*mortgage*
40 *lending*” means *processing, underwriting, or as a lender using or*

1 advancing one’s own funds, or making a commitment to advance
 2 one’s own funds, to a loan applicant for a residential mortgage
 3 loan.

4 (e)

5 (u) “Mortgage loan,” “residential mortgage loan,” or “home
 6 mortgage loan” means a federally regulated mortgage loan as
 7 defined in Section 3500.2 of Title 24 of the Code of Federal
 8 Regulations, or a loan made to finance construction of a one to
 9 four family dwelling. *The terms also mean any loan primarily for*
 10 *personal, family, or household use that is secured by a mortgage,*
 11 *deed of trust, or other equivalent consensual security interest on*
 12 *a dwelling, as defined in Section 103(v) of the Truth in Lending*
 13 *Act, or residential real estate upon which is constructed or intended*
 14 *to be constructed a dwelling.*

15 (v) “Mortgage loan originator” means an individual who for
 16 compensation or gain, or in the expectation of compensation or
 17 gain, takes a residential mortgage loan application or offers or
 18 negotiates terms of a residential mortgage loan. A mortgage loan
 19 originator does not include any of the following:

20 (1) An individual engaged solely as a loan processor or
 21 underwriter except as otherwise provided in subdivision (r).

22 (2) A person or entity that only performs real estate brokerage
 23 activities and is licensed or registered in accordance with
 24 California law, unless the person or entity is compensated by a
 25 lender, a mortgage broker, or other mortgage loan originator, or
 26 by any agent of the lender, mortgage broker, or other mortgage
 27 loan originator.

28 (3) A person or entity solely involved in extensions of credit
 29 relating to timeshare plans, as that term is defined in Section
 30 101(53D) of Title 11 of the United States Code.

31 (p)

32 (w) “Mortgage servicer” or “residential mortgage loan servicer”
 33 means a person that (1) is an approved servicer for the Federal
 34 Housing Administration, Veterans Administration, Farmers Home
 35 Administration, Government National Mortgage Association,
 36 Federal National Mortgage Association, or Federal Home Loan
 37 Mortgage Corporation, and (2) directly services or offers to service
 38 mortgage loans.

39 (x) “Nationwide Mortgage Licensing System and Registry”
 40 means a mortgage licensing system developed and maintained by

1 *the Conference of State Bank Supervisors and the American*
2 *Association of Residential Mortgage Regulators for the licensing*
3 *and registration of licensed mortgage loan originators.*

4 (q)

5 (y) “Net worth” has the meaning set forth in Section 50201.

6 (z) “Nontraditional mortgage product” means any mortgage
7 product other than a 30-year fixed rate mortgage.

8 (r)

9 (aa) “Own funds” means (1) cash, corporate capital, or
10 warehouse credit lines at commercial banks, savings banks, savings
11 and loan associations, industrial loan companies, or other sources
12 that are liability items on a lender’s financial statements, whether
13 secured or unsecured, or (2) a lender’s affiliate’s cash, corporate
14 capital, or warehouse credit lines at commercial banks or other
15 sources that are liability items on the affiliate’s financial statements,
16 whether secured or unsecured. “Own funds” does not include funds
17 provided by a third party to fund a loan on condition that the third
18 party will subsequently purchase or accept an assignment of that
19 loan.

20 (s)

21 (ab) “Person” means a natural person, a sole proprietorship, a
22 corporation, a partnership, a limited liability company, an
23 association, a trust, a joint venture, an unincorporated organization,
24 a joint stock company, a government or a political subdivision of
25 a government, and any other entity.

26 (ac) “Registered mortgage loan originator” means an individual
27 who meets both of the following:

28 (1) *The individual meets the definition of a mortgage loan*
29 *originator and is an employee of (A) a depository institution, (B)*
30 *a subsidiary that is owned and controlled by a depository*
31 *institution and regulated by a federal banking agency, or (C) an*
32 *institution regulated by the Farm Credit Administration.*

33 (2) *The individual is registered with, and maintains a unique*
34 *identifier through, the Nationwide Mortgage Licensing System*
35 *and Registry.*

36 (t)

37 (ad) “Residential real property” or “residential real estate” means
38 real property located in this state ~~that is improved by a one-to-four~~
39 ~~family,~~ *upon which is constructed or intended to be constructed*
40 *a dwelling.*

1 ~~(t)~~
 2 ~~(ae)~~ “Service” or “servicing” means receiving more than three
 3 installment payments of principal, interest, or other amounts placed
 4 in escrow, pursuant to the terms of a mortgage loan and performing
 5 services by a licensee relating to that receipt or the enforcement
 6 of its receipt, on behalf of the holder of the note evidencing that
 7 loan.

8 ~~(v)~~
 9 ~~(af)~~ “Sell” includes exchange, offer to sell, or solicitation to
 10 sell.

11 ~~(ag)~~ “Unique identifier” means a number or other identifier
 12 assigned by protocols established by the Nationwide Mortgage
 13 Licensing System and Registry.

14 ~~SEC. 51.~~ Section 50110 is added to the Financial Code, to
 15 read:

16 50110. (a) An individual, unless specifically exempted under
 17 subdivision (b), shall not engage in the business of a mortgage
 18 loan originator with respect to any dwelling located in this state
 19 without first obtaining and maintaining annually a mortgage loan
 20 originator license. Each licensed mortgage loan originator must
 21 register with and maintain a valid unique identifier issued by the
 22 Nationwide Mortgage Licensing System and Registry.

23 (b) The following are exempt from mortgage loan originator
 24 licensing requirements in this section:

25 (1) Registered mortgage loan originators, when acting for an
 26 entity described in subdivision (ac) of Section 50003.

27 (2) Any individual who offers or negotiates terms of a residential
 28 mortgage loan with or on behalf of an immediate family member
 29 of the individual.

30 (3) Any individual who offers or negotiates terms of a residential
 31 mortgage loan secured by a dwelling that served as the individual’s
 32 residence.

33 (4) A licensed attorney who negotiates the terms of a residential
 34 mortgage loan on behalf of a client as an ancillary matter to the
 35 attorney’s representation of the client, unless the attorney is
 36 compensated by a lender, a mortgage broker, or other mortgage
 37 loan originator or by any agent of the lender, mortgage broker,
 38 or other mortgage loan originator.

39 (5) A finance lender or broker licensed by the Department of
 40 Corporations under the California Finance Lenders Law, and

1 every licensed mortgage loan originator employed by the finance
2 lender or broker who is registered with the Nationwide Mortgage
3 Licensing System and Registry.

4 (c) A loan processor or underwriter who is an independent
5 contractor may not engage in the activities of a loan processor or
6 underwriter unless the independent contractor loan processor or
7 underwriter obtains and maintains a license under subdivision

8 (a). Each independent contractor loan processor or underwriter
9 licensed as a mortgage loan originator shall have and maintain
10 a valid unique identifier issued by the Nationwide Mortgage
11 Licensing System and Registry.

12 (d) The commissioner may establish licensing rules or
13 regulations and interim procedures for licensing and acceptance
14 of applications.

15 SEC. 52. Section 50110.1 is added to the Financial Code, to
16 read:

17 50110.1. (a) An applicant for a license as a mortgage loan
18 originator shall apply through the submission of the uniform form
19 prescribed by the Nationwide Mortgage Licensing System and
20 Registry. The commissioner may require the submission of
21 additional information or supporting documentation to the
22 department.

23 (b) At the time of filing the application, the applicant shall pay
24 to the commissioner a sum to be determined by the commissioner
25 as an application fee for processing the application and
26 investigating the applicant. The application and investigating fee
27 are not refundable if an application is denied or withdrawn.

28 (c) The commissioner may establish relationships or contracts
29 with the Nationwide Mortgage Licensing System and Registry or
30 other entities designated by the Nationwide Mortgage Licensing
31 System and Registry to collect and maintain records and process
32 transaction fees or other fees related to mortgage loan originators,
33 licensees, or other persons subject to the Secure and Fair
34 Enforcement for Mortgage Licensing Act of 2008 (Public Law
35 110-289).

36 (d) For the purpose of participating in the Nationwide Mortgage
37 Licensing System and Registry, the commissioner may modify, in
38 whole or in part, by rule, regulation, or order, any or all of the
39 requirements of this division and may establish new requirements

1 *as reasonably necessary to participate in the Nationwide Mortgage*
2 *Licensing System and Registry.*

3 *(e) In connection with an application for licensing as a mortgage*
4 *loan originator, the applicant shall, at a minimum, furnish to the*
5 *Nationwide Mortgage Licensing System and Registry information*
6 *concerning the applicant's identity, including the following:*

7 *(1) Fingerprints for submission to the Federal Bureau of*
8 *Investigation, and any governmental agency or entity authorized*
9 *to receive such information for a state, national, and international*
10 *criminal history background check.*

11 *(2) Personal history and experience in a form prescribed by the*
12 *Nationwide Mortgage Licensing System and Registry, including*
13 *the submission of authorization for the Nationwide Mortgage*
14 *Licensing System and Registry and the commissioner to obtain the*
15 *following:*

16 *(A) An independent credit report obtained from a consumer*
17 *reporting agency described in Section 603(p) of the federal Fair*
18 *Credit Reporting Act.*

19 *(B) Information related to any administrative, civil, or criminal*
20 *findings by any governmental jurisdiction.*

21 *(f) The commissioner may use the Nationwide Mortgage*
22 *Licensing System and Registry as a channeling agent for requesting*
23 *information from and distributing information to the Department*
24 *of Justice or any governmental agency, and for requesting and*
25 *distributing information to and from any source so directed by the*
26 *commissioner.*

27 *SEC. 53. Section 50110.2 is added to the Financial Code, to*
28 *read:*

29 *50110.2. The commissioner shall not issue a mortgage loan*
30 *originator license unless the commissioner makes, at a minimum,*
31 *the following findings:*

32 *(a) The applicant has never had a mortgage loan originator*
33 *license revoked in any governmental jurisdiction, except that a*
34 *subsequent formal rescission of the revocation shall not be deemed*
35 *a revocation.*

36 *(b) The applicant has not been convicted of, or pled guilty or*
37 *nolo contendere to, a felony in a domestic, foreign, or military*
38 *court during the seven-year period preceding the date of the*
39 *application for licensing and registration, or at any time preceding*
40 *the date of application, if the felony involved an act of fraud,*

1 *dishonesty, or a breach of trust, or money laundering. For purposes*
2 *of this subdivision, any pardon of a conviction shall not be a*
3 *conviction.*

4 *(c) (1) The applicant has demonstrated financial responsibility,*
5 *character, and general fitness such as to command the confidence*
6 *of the community and to warrant a determination that the mortgage*
7 *loan originator will operate honestly, fairly, and efficiently within*
8 *the purposes of the Secure and Fair Enforcement for Mortgage*
9 *Licensing Act of 2008 (Public Law 110-289).*

10 *(2) For purposes of this subdivision a person has shown that*
11 *he or she is not financially responsible when he or she has shown*
12 *a disregard in the management of his or her own financial*
13 *condition. A determination that an individual has not shown*
14 *financial responsibility may include, but not be limited to, the*
15 *following:*

16 *(A) Current outstanding judgments, except judgments solely as*
17 *a result of medical expenses.*

18 *(B) Current outstanding tax liens or other government liens and*
19 *filings.*

20 *(C) Foreclosures within the past three years.*

21 *(D) A pattern of seriously delinquent accounts within the past*
22 *three years.*

23 *(d) The applicant has completed the prelicensing education*
24 *requirement described in Section 50110.3.*

25 *(e) The applicant has passed a written test that meets the test*
26 *requirement described in Section 50110.4.*

27 *(f) The surety bond of the residential mortgage lender or servicer*
28 *employing or intending to employ the applicant covers the activities*
29 *of the applicant, or the applicant is otherwise covered by a bond*
30 *or recovery fund.*

31 *SEC. 54. Section 50110.3 is added to the Financial Code, to*
32 *read:*

33 *50110.3. (a) In order to meet the prelicensing education*
34 *requirements referred to in subdivision (d) of Section 50110.2, an*
35 *individual shall complete at least 20 hours of education approved*
36 *in accordance with subdivision (b), which shall include at least*
37 *the following:*

38 *(1) Three hours of federal law and regulations.*

39 *(2) Two hours of state law and regulations.*

1 (3) Three hours of ethics, which shall include instruction on
2 fraud, consumer protection, and fair lending issues.

3 (4) Two hours of training related to lending standards for the
4 nontraditional mortgage product marketplace.

5 (b) For purposes of subdivision (a), prelicensing education
6 courses shall be reviewed and approved by the Nationwide
7 Mortgage Licensing System and Registry. Review and approval
8 of a prelicensing education course shall include review and
9 approval of the course provider.

10 (c) Nothing in this section shall preclude any education course,
11 as approved by the Nationwide Mortgage Licensing System and
12 Registry, that is provided by the employer of the mortgage loan
13 originator or an entity which is affiliated with the mortgage loan
14 originator by an agency contract, or any subsidiary or affiliate of
15 that employer or entity.

16 (d) Prelicensing education may be offered either in a classroom,
17 online, or by any other means approved by the Nationwide
18 Mortgage Licensing System and Registry.

19 (e) The completion in another state of prelicensing education
20 requirements set forth in paragraphs (1), (2), and (3) of subdivision
21 (a), that have been approved by the Nationwide Mortgage
22 Licensing System and Registry, shall be accepted as credit towards
23 completion of prelicensing education requirements in this state.

24 SEC. 55. Section 50110.4 is added to the Financial Code, to
25 read:

26 50110.4. (a) In order to meet the written test requirement
27 referred to in subdivision (e) of Section 50110.2, an individual
28 shall pass, in accordance with the standards established under
29 this section, a qualified written test developed by the Nationwide
30 Mortgage Licensing System and Registry and administered by a
31 test provider approved by the Nationwide Mortgage Licensing
32 System and Registry.

33 (b) A written test shall not be treated as a qualified written test
34 for purposes of subdivision (a) unless the test adequately measures
35 the applicant's knowledge and comprehension in appropriate
36 subject areas, including the following:

37 (1) Ethics.

38 (2) Federal law and regulation relating to mortgage origination.

39 (3) State law and regulation relating to mortgage origination.

1 (4) Federal and state law and regulation, including instruction
2 on fraud, consumer protection, the nontraditional mortgage
3 marketplace, and fair lending issues.

4 (c) Nothing in this section shall prohibit a test provider approved
5 by the Nationwide Mortgage Licensing System and Registry from
6 providing a test at the location of the employer of the applicant or
7 the location of any subsidiary or affiliate of the employer of the
8 applicant, or the location of any entity with which the applicant
9 holds an exclusive arrangement to conduct the business of a
10 mortgage loan originator.

11 (d) The following shall apply to the test described in this section:

12 (1) An individual shall not be considered to have passed a
13 qualified written test unless the individual achieves a test score of
14 not less than 75 percent correct answers to questions.

15 (2) An individual may retake a test three consecutive times with
16 each consecutive taking occurring at least 30 days after the
17 preceding test.

18 (3) After failing three consecutive tests, an individual shall wait
19 at least six months before taking the test again.

20 (4) A licensed mortgage loan originator who fails to maintain
21 a valid license for a period of five years or longer shall retake the
22 test, not taking into account any time during which the individual
23 is a registered mortgage loan originator.

24 SEC. 56. Section 50110.5 is added to the Financial Code, to
25 read:

26 50110.5. Each mortgage loan originator shall submit to the
27 Nationwide Mortgage Licensing System and Registry reports of
28 condition, which shall be in the form and shall contain that
29 information as the Nationwide Mortgage Licensing System and
30 Registry may require. The commissioner may by regulation require
31 a residential mortgage lender or servicer to submit the reports to
32 the Nationwide Mortgage Licensing System and Registry on behalf
33 of the mortgage loan originators employed by the residential
34 mortgage lender or servicer.

35 SEC. 57. Section 50110.6 is added to the Financial Code, to
36 read:

37 50110.6. (a) The minimum standards for license renewal for
38 mortgage loan originators shall include the following:

39 (1) The mortgage loan originator continues to meet the minimum
40 standards for license issuance under Section 50110.2.

1 (2) *The mortgage loan originator has satisfied the annual*
2 *continuing education requirements described in Section 50110.7.*

3 (3) *The mortgage loan originator has paid all required fees for*
4 *renewal of the license.*

5 (b) *The license of a mortgage loan originator failing to satisfy*
6 *the minimum standards for license renewal shall expire. The*
7 *commissioner may adopt procedures for the reinstatement of*
8 *expired licenses consistent with the standards established by the*
9 *Nationwide Mortgage Licensing System and Registry.*

10 SEC. 58. *Section 50110.7 is added to the Financial Code, to*
11 *read:*

12 50110.7. (a) *In order to meet the annual continuing education*
13 *requirements referred to in paragraph (2) of subdivision (a) of*
14 *Section 50110.6, a licensed mortgage loan originator shall*
15 *complete at least eight hours of education approved in accordance*
16 *with subdivision (b), which shall include at least the following:*

17 (1) *Three hours of federal law and regulations.*

18 (2) *One hour of state law and regulations.*

19 (3) *Two hours of ethics, which shall include instruction on fraud,*
20 *consumer protection, and fair lending issues.*

21 (4) *Two hours of training related to lending standards for the*
22 *nontraditional mortgage product marketplace.*

23 (b) *For purposes of subdivision (a), continuing education*
24 *courses shall be reviewed and approved by the Nationwide*
25 *Mortgage Licensing System and Registry. Review and approval*
26 *of a continuing education course shall include review and approval*
27 *of the course provider.*

28 (c) *Nothing in this section shall preclude any education course,*
29 *as approved by the Nationwide Mortgage Licensing System and*
30 *Registry, that is provided by the employer of the mortgage loan*
31 *originator or an entity which is affiliated with the mortgage loan*
32 *originator by an agency contract, or any subsidiary or affiliate of*
33 *the employer or entity.*

34 (d) *Continuing education may be offered either in a classroom,*
35 *online, or by any other means approved by the Nationwide*
36 *Mortgage Licensing System and Registry.*

37 (e) *Except as provided in Section 50110.6 and subdivision (i),*
38 *a mortgage loan originator may only receive credit for a continuing*
39 *education course in the year in which the course is taken, and a*
40 *mortgage loan originator may not take the same approved course*

1 *in the same or successive years to meet the annual requirements*
2 *for continuing education.*

3 (f) *A licensed mortgage loan originator who is an approved*
4 *instructor of an approved continuing education course may receive*
5 *credit for the licensed mortgage loan originator's own annual*
6 *continuing education requirement at the rate of two hours credit*
7 *for every one hour taught.*

8 (g) *The successful completion of the education requirements*
9 *approved by the Nationwide Mortgage Licensing System and*
10 *Registry under paragraphs (1), (2), and (3) of subdivision (a) in*
11 *another state shall be accepted as credit towards completion of*
12 *continuing education requirements in this state.*

13 (h) *A licensed mortgage loan originator who subsequently*
14 *becomes unlicensed shall complete the continuing education*
15 *requirements for the last year in which the license was held prior*
16 *to issuance of a new or renewed license.*

17 (i) *An individual meeting the requirements of paragraphs (1)*
18 *and (3) of subdivision (a) of Section 50110.6 may correct any*
19 *deficiency in continuing education as established by rule or*
20 *regulation of the commissioner.*

21 *SEC. 59. Section 50110.8 is added to the Financial Code, to*
22 *read:*

23 *50110.8. Every mortgage loan originator shall be licensed*
24 *through the Nationwide Mortgage Licensing System and Registry.*
25 *The commissioner shall participate in the Nationwide Mortgage*
26 *Licensing System and Registry, and may establish, by regulation*
27 *or order, requirements as necessary for participation, including,*
28 *but not limited to, the following:*

29 (a) *Background checks for any of the following:*

30 (1) *Criminal history through fingerprints or other databases.*

31 (2) *Civil or administrative records.*

32 (3) *Credit history.*

33 (4) *Any other information as deemed necessary by the*
34 *Nationwide Mortgage Licensing System and Registry.*

35 (b) *The payment of fees to apply for or renew licenses through*
36 *the Nationwide Mortgage Licensing System and Registry.*

37 (c) *The setting or resetting as necessary of renewal or reporting*
38 *dates.*

39 (d) *Requirements for amending or surrendering a license or*
40 *any other activities as the commissioner deems necessary for*

1 *participation in the Nationwide Mortgage Licensing System and*
2 *Registry.*

3 *SEC. 60. Section 50110.9 is added to the Financial Code, to*
4 *read:*

5 *50110.9. The commissioner shall report regularly violations*
6 *of this division by persons engaged in the business of making,*
7 *brokering, or servicing residential mortgage loans, or by mortgage*
8 *loan originators, as well as enforcement actions and other relevant*
9 *information, to the Nationwide Mortgage Licensing System and*
10 *Registry.*

11 *SEC. 61. Section 50110.10 is added to the Financial Code, to*
12 *read:*

13 *50110.10. The commissioner shall establish a process whereby*
14 *mortgage loan originators may challenge information entered into*
15 *the Nationwide Mortgage Licensing System and Registry by the*
16 *commissioner.*

17 *SEC. 62. Section 50110.11 is added to the Financial Code, to*
18 *read:*

19 *50110.11. (a) The commissioner may do any of the following:*

20 *(1) Deny, suspend, revoke, condition, or decline to renew a*
21 *mortgage loan originator license for a violation of this division,*
22 *or any rules or regulations adopted under this division.*

23 *(2) Deny, suspend, revoke, condition, or decline to renew a*
24 *mortgage loan originator license if an applicant or mortgage loan*
25 *originator fails at any time to meet the requirements of Section*
26 *50110.2 or 50110.6, or withholds information or makes a material*
27 *misstatement in an application for a license or renewal of a license.*

28 *(3) Order restitution against a person subject to this division*
29 *for a violation of this division.*

30 *(4) Impose fines on any person subject to this division pursuant*
31 *to subdivisions (b), (c), and (d).*

32 *(5) Issue orders or directives under this division as follows:*

33 *(A) Order or direct persons subject to this division to cease and*
34 *desist from conducting business, including immediate temporary*
35 *orders to cease and desist.*

36 *(B) Order or direct persons subject to this division to cease any*
37 *harmful activities or violations of this division, including immediate*
38 *temporary orders to cease and desist.*

39 *(C) Enter immediate temporary orders to cease business under*
40 *a license issued pursuant to the authority granted under Section*

1 50110 if the commissioner determines that the license was
2 erroneously granted or the person is currently in violation of this
3 division.

4 (D) Order or direct any other affirmative action as the
5 commissioner deems necessary.

6 (b) The commissioner may impose a civil penalty on a mortgage
7 loan originator or person subject to this division, if the
8 commissioner finds, on the record after notice and opportunity for
9 hearing, that the mortgage loan originator or person subject to
10 this division has violated or failed to comply with any requirement
11 of this division or any regulation prescribed by the commissioner
12 under this division or order issued under authority of this division.

13 (c) The maximum amount of penalty for each act or omission
14 described in subdivision (b) shall be twenty-five thousand dollars
15 (\$25,000).

16 (d) Each violation or failure to comply with any directive or
17 order of the commissioner is a separate and distinct violation or
18 failure.

19 SEC. 63. Section 50110.12 is added to the Financial Code, to
20 read:

21 50110.12. (a) Except as otherwise provided in Section 1512
22 of Public Law 110-289 (the Secure and Fair Enforcement for
23 Mortgage Licensing Act of 2008), any requirement under federal
24 or state law regarding the privacy or confidentiality of any
25 information or material provided to the Nationwide Mortgage
26 Licensing System and Registry, and any privilege arising under
27 federal or state law, including the rules of any federal or state
28 court with respect to the information or material, shall continue
29 to apply to the information or material after the information or
30 material has been disclosed to the Nationwide Mortgage Licensing
31 System and Registry. The information and material may be shared
32 with all state and federal regulatory officials with mortgage
33 industry oversight authority without the loss of privilege or the
34 loss of confidentiality protections provided by federal or state law.

35 (b) To promote more effective regulation and reduce regulatory
36 burden through supervisory information sharing, the commissioner
37 may enter into agreements or sharing arrangements with other
38 governmental agencies, the Conference of State Bank Supervisors,
39 the American Association of Residential Mortgage Regulators, or

1 *other associations representing governmental agencies as*
2 *established by rule, regulation, or order of the commissioner.*

3 *(c) Information or material that is subject to a privilege or*
4 *confidentiality under subdivision (a) shall not be subject to the*
5 *following:*

6 *(1) Disclosure under any state law governing the disclosure to*
7 *the public of information held by an officer or an agency of the*
8 *state.*

9 *(2) Subpoena or discovery, or admission into evidence, in any*
10 *private civil action or administrative process, unless with respect*
11 *to any privilege held by the Nationwide Mortgage Licensing System*
12 *and Registry with respect to that information or material, the*
13 *person to whom the information or material pertains waives, in*
14 *whole or in part, in the discretion of the person, that privilege.*

15 *(d) Any state law relating to the disclosure of confidential*
16 *supervisory information or any information or material provided*
17 *to the Nationwide Mortgage Licensing System and Registry that*
18 *is inconsistent with subdivision (a) shall be superseded by the*
19 *requirements of this section.*

20 *(e) This section shall not be applicable to the information or*
21 *material relating to the employment history of, and publicly*
22 *adjudicated disciplinary and enforcement actions against,*
23 *mortgage loan originators that is included in the Nationwide*
24 *Mortgage Licensing System and Registry for access by the public.*

25 *SEC. 64. Section 50110.16 is added to the Financial Code, to*
26 *read:*

27 *50110.16. The unique identifier of any person originating a*
28 *residential mortgage loan shall be clearly shown on all residential*
29 *mortgage loan application forms, solicitations or advertisements,*
30 *including business cards or Internet Web sites, and any other*
31 *documents as established by rule, regulation, or order of the*
32 *commissioner.*

33 *SEC. 65. Section 50121 of the Financial Code is amended to*
34 *read:*

35 *50121. The commissioner shall issue a residential mortgage*
36 *loan license upon the satisfaction of all of the following:*

37 *(a) The filing with the commissioner of a complete and verified*
38 *application for licensure.*

39 *(b) The filing as an exhibit to the application of a listing of*
40 *material judgments filed against, and bankruptcy petitions filed*

1 by, the applicant for the preceding five years, and the disposition
2 thereof.

3 (c) The payment of a nonrefundable investigation fee of one
4 hundred dollars (\$100), plus the cost of fingerprint processing and
5 clearance, and an application filing fee of nine hundred dollars
6 (\$900).

7 (d) An investigation of the statements required by Section 50124
8 based upon which the commissioner is able to issue findings that
9 the financial responsibility, criminal records (verified by
10 fingerprint, at the discretion of the commissioner), experience,
11 character, and general fitness of the applicant and of the partners
12 or members thereof, if the applicant is a partnership or association,
13 and of the principal officers and directors thereof, if the license
14 applicant is a corporation, support a finding that the business will
15 be operated honestly, fairly, and in accordance with the
16 requirements of this division.

17 *SEC. 66. Section 50122 of the Financial Code is amended to*
18 *read:*

19 50122. (a) The application for a residential mortgage lender
20 license shall be in writing, executed under penalty of perjury, and
21 verified on a form prescribed by the commissioner. If an applicant
22 proposes to engage in business as a residential mortgage loan
23 servicer as well as a residential mortgage lender, this information
24 shall be set forth in the application. The commissioner may issue
25 a license under this chapter to engage in business as a residential
26 mortgage lender or to engage in business as a residential mortgage
27 lender and residential mortgage loan servicer. A person filing an
28 application under this chapter to engage in business as a residential
29 mortgage lender and a residential mortgage loan servicer is not
30 required to file an application under Chapter 3 (commencing with
31 Section 50130).

32 (b) The application shall contain the name and complete business
33 and residential address or addresses of the applicant. If the applicant
34 is a partnership, association, corporation, or other entity, the
35 application shall contain the names and complete business and
36 residential addresses of each member, director, and principal
37 officer. The application also shall include a description of the
38 activities of the applicant in the detail and for the periods that the
39 commissioner may require, including all of the following:

1 (1) A statement of financial solvency, noting the net worth
2 requirements and supported by an audited financial statement
3 prepared by an independent certified public accountant, and access
4 to the supporting credit information as required by this division.

5 (2) A statement that the applicant or its members, directors, or
6 principals, as appropriate, are at least 18 years of age.

7 (3) Information as to the character, fitness, financial and business
8 responsibility, background, experience, and criminal convictions
9 of any of the following:

10 (A) Any person that owns or controls, directly or indirectly, 10
11 percent or more of any class of stock of the applicant.

12 (B) Any person that controls, directly or indirectly, the election
13 of 25 percent or more of the members of the board of directors of
14 an applicant.

15 (C) Any person or entity that significantly influences or controls
16 the management of the applicant.

17 (4) A description of any disciplinary action filed under any other
18 license through which the person conducts its business.

19 (5) A description of any adverse judgments entered in court
20 actions filed by borrowers based upon allegations of fraud,
21 misrepresentation, or dishonesty in the conduct of the person's
22 business.

23 (6) A copy of the fidelity bond currently in effect.

24 (7) Other information as required by rule of the commissioner.

25 (c) *The commissioner may, by rule, require an applicant for a*
26 *residential mortgage loan license to apply through the Nationwide*
27 *Mortgage Licensing System and Registry, and may adopt*
28 *regulations to accommodate the uniform forms of that registry.*

29 *SEC. 67. Section 50124 of the Financial Code is amended to*
30 *read:*

31 50124. (a) A license application must be accompanied by an
32 exhibit containing statements that the applicant agrees to do the
33 following:

34 (1) To maintain staff adequate to meet the requirements of this
35 division, as prescribed by rule or order of the commissioner.

36 (2) To keep and maintain for 36 months from the date of final
37 entry the business records and other information required by law
38 or rules of the commissioner regarding any mortgage loan made
39 or serviced in the course of the conduct of its business.

1 (3) To file with the commissioner any report required under law
2 or by rule or order of the commissioner.

3 (4) To disburse funds in accordance with its agreements and to
4 make a good faith and reasonable effort to effect closing in a timely
5 manner.

6 (5) To account or deliver to a person any personal property such
7 as money, funds, deposit, check, draft, mortgage, other document,
8 or thing of value, that has come into its possession and is not its
9 property, or that it is not in law or equity entitled to retain under
10 the circumstances, at the time that has been agreed upon or is
11 required by law, or, in the absence of a fixed time, upon demand
12 of the person entitled to the accounting or delivery.

13 (6) To file with the commissioner an amendment to its
14 application prior to any material change in the information
15 contained in the application for licensure, including, without
16 limitation, the plan of operation. The commissioner shall, within
17 20 business days of receiving a completed amendment to the
18 application, or within a longer time if agreed to by the licensee,
19 issue an order approving or disapproving the effectiveness of the
20 proposed amendment.

21 (7) To comply with the provisions of this division, and with any
22 order or rule of the commissioner.

23 (8) To submit to periodic examination by the commissioner as
24 required by this division.

25 (9) To advise the commissioner by amendment to its application
26 of any material judgment filed against, or bankruptcy petition filed
27 by, the licensee within five days of the filing.

28 (10) To notify the commissioner, in writing, by certified mail,
29 return receipt requested, prior to opening a branch office in this
30 state or changing the business location or locations of the applicant
31 or the branch offices of the applicant from which activities subject
32 to this division are conducted.

33 *(11) To refrain from employing, or paying a commission or*
34 *other fee, to a mortgage loan originator who is not licensed or*
35 *registered in this state.*

36 (b) The exhibit also shall contain a space for the applicant to
37 attest that the applicant:

38 (1) Has complied with all applicable state and federal tax return
39 filing requirements for the past three years or has filed with the

1 commissioner an accountant’s or attorney’s statement as to why
2 no return was filed.

3 (2) Has not committed a crime against the laws of any state or
4 the United States, involving moral turpitude, misrepresentation,
5 fraudulent or dishonest dealing, or fraud, and has disclosed to the
6 commissioner any final judgment entered against it in a civil action
7 upon grounds or allegations of fraud, misrepresentation, or deceit.

8 (3) Has not engaged in conduct that would be cause for denial
9 of a license.

10 (4) Is not insolvent.

11 (5) Has acted with due care and competence in performing any
12 act for which it is required to hold a license under this division.

13 (6) Any other matter as required by rule of the commissioner.

14 (7) *The commissioner may adopt regulations to accommodate*
15 *the uniform forms of the Nationwide Mortgage Licensing System*
16 *and Registry.*

17 *SEC. 68. Section 50125 of the Financial Code is amended to*
18 *read:*

19 50125. The commissioner may refuse to issue a *residential*
20 *mortgage loan* license if any of the following apply:

21 (a) The applicant is not in material compliance with a provision
22 of this division or an order or rule of the commissioner.

23 (b) The commissioner cannot make the findings specified in
24 subdivision (d) of Section 50121.

25 (c) A material requirement for issuance of a license has not been
26 met.

27 *SEC. 69. Section 50126 of the Financial Code is amended to*
28 *read:*

29 50126. (a) Upon reasonable notice and opportunity to be heard,
30 the commissioner may deny an application for any of the following
31 reasons:

32 (1) A false statement of a material fact has been made in the
33 application.

34 (2) Any officer, director, general partner, or person owning or
35 controlling, directly or indirectly, 10 percent or more of the
36 outstanding interests or equity securities of the applicant has, within
37 the last 10 years, (A) been convicted of, or pleaded nolo contendere
38 to, a crime or (B) committed any act involving dishonesty, fraud,
39 or deceit, if the crime or act is substantially related to the

1 qualifications, functions, or duties of a person engaged in business
2 in accordance with this division.

3 (3) The applicant or any officer, director, general partner, or
4 person owning or controlling, directly or indirectly, 10 percent or
5 more of the outstanding interests or equity securities of the
6 applicant, has violated any provision of this division or the rules
7 thereunder or any similar regulatory scheme of the State of
8 California or a foreign jurisdiction.

9 (4) *The applicant employs a mortgage loan originator who is*
10 *not licensed in this state.*

11 (b) The application shall be considered withdrawn within the
12 meaning of this section if the applicant fails to respond to a written
13 notification of a deficiency in the application within 90 days of
14 the date of the notification.

15 (c) The commissioner shall, within 60 days from the filing of
16 a full and complete application for a license, including the receipt
17 of background and investigative reports from the Department of
18 Justice or other government agencies, and the payment of the fees
19 required by Section 50121, issue either a license or a statement of
20 issues prepared in accordance with Chapter 5 (commencing with
21 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
22 Code.

23 *SEC. 70. Section 50130 of the Financial Code is amended to*
24 *read:*

25 50130. (a) A mortgage servicer shall file an application for
26 licensure under this chapter with the commissioner to service
27 mortgage loans in this state by satisfying the requirements of this
28 chapter and the applicable provisions, as determined by the
29 commissioner, of Chapter 2 (commencing with Section 50120).

30 (b) A mortgage servicer may apply for licensure by doing all
31 of the following:

32 (1) Filing with the commissioner an application containing the
33 information required by Section 50122, and any additional
34 information the commissioner may require by rule.

35 (2) Paying the investigation and application fees required by
36 Section 50121.

37 (3) Submitting the statements required by Section 50124.

38 (4) Complying with the applicable provisions of Chapter 2
39 (commencing with Section 50120).

1 (c) A licensee may not make or service loans secured by real
2 property pursuant to the authority of a license, or exemption from
3 licensure, under the Real Estate Law.

4 (d) The commissioner may, pursuant to Section 50321, order a
5 licensee to cease any other business conducted at any location
6 where the licensee operates under the authority of a residential
7 mortgage servicer license, if the commissioner finds that the
8 conduct of that business has facilitated evasions of this division
9 or the rules adopted pursuant to this division, or that the conduct
10 of that business is in violation of any law to which that business
11 is subject.

12 (e) A license for a business location outside this state may be
13 issued if the licensee agrees in writing, and subject to the sole
14 discretion of the commissioner, to either (1) make the licensee's
15 books, accounts, papers, records, and files available to the
16 commissioner or the commissioner's representatives in this state
17 within 10 calendar days of a request from the commissioner or,
18 (2) pay the reasonable expenses for travel, meals, and lodging of
19 the commissioner or the commissioner's representatives incurred
20 during an investigation or examination made at the licensee's
21 location outside this state.

22 (f) The commissioner shall license a mortgage servicer upon
23 completion of the investigation and issuance of the findings
24 required by Section 50121, subject to Sections 50123, 50125,
25 50126, and 50127.

26 (g) A mortgage servicer licensed to service mortgage loans shall
27 comply with all applicable requirements of California and federal
28 law, including the Civil Code and Section 2609 of the Real Estate
29 Settlement Procedures Act of 1974, as amended (12 U.S.C.A. Sec.
30 2601 et seq.).

31 (h) A license shall remain in effect until suspended, surrendered,
32 or revoked.

33 (i) *The commissioner may, by rule, require an applicant for a*
34 *mortgage servicer license to apply through the Nationwide*
35 *Mortgage Licensing System and Registry, and may adopt*
36 *regulations to accommodate the uniform forms of that registry.*

37 *SEC. 71. Section 50204 of the Financial Code is amended to*
38 *read:*

39 50204. A licensee may not do any of the following:

- 1 (a) Disburse the mortgage loan proceeds in a form other than
2 direct deposit to the borrower's or borrower's designee's account,
3 wire, bank or certified check, ACH funds transfer, or attorney's
4 check drawn on a trust account. An entity may apply to the
5 commissioner for a waiver of the requirements of this subdivision
6 by demonstrating, in a letter application, that it has adopted or will
7 adopt another method of disbursement of loan proceeds that will
8 satisfy the purposes of this subdivision.
- 9 (b) Fail to disburse funds in accordance with a commitment to
10 make a mortgage loan that is accepted by the applicant.
- 11 (c) Accept fees at closing that are not disclosed to the borrower
12 on the federal HUD-1 Settlement Statement.
- 13 (d) Commit an act in violation of Section 2941 of the Civil
14 Code.
- 15 (e) Obtain or induce an agreement or other instrument in which
16 blanks are left to be filled in after execution.
- 17 (f) Intentionally delay closing of a mortgage loan for the sole
18 purpose of increasing interest, costs, fees, or charges payable by
19 the borrower.
- 20 (g) Engage in fraudulent home mortgage underwriting practices.
- 21 (h) Make payment of any kind, whether directly or indirectly,
22 to an in-house or fee appraiser of a government or private money
23 lending agency, with which an application for a home mortgage
24 has been filed, for the purpose of influencing the independent
25 judgment of the appraiser with respect to the value of real estate
26 that is to be covered by the home mortgage.
- 27 (i) Engage in any acts in violation of Section 17200 or 17500
28 of the Business and Professions Code.
- 29 (j) Knowingly misrepresent, circumvent, or conceal, through
30 subterfuge or device, any material aspect or information regarding
31 a transaction to which it is a party.
- 32 (k) Do an act, whether of the same or a different character than
33 specified in this section, that constitutes fraud or dishonest dealings.
- 34 (l) Sell more than eight loans in a calendar year made under the
35 authority of this license to a person who is not an institutional
36 investor.
- 37 (m) Commit an act in violation of Section 1695.13 of the Civil
38 Code.
- 39 (n) Make or service a loan that is not a residential mortgage
40 loan under the authority of the license.

1 (o) Commit an act in violation of Section 2948.5 of the Civil
2 Code. Evidence of compliance with Section 2948.5 of the Civil
3 Code may be evidenced by (1) a certification executed by the
4 licensee, at no cost to the borrower, pursuant to Section 2015.5 of
5 the Code of Civil Procedure, or (2) other evidence in the loan file
6 acceptable to the commissioner.

7 (p) *Make or broker a loan that was offered by, negotiated by,*
8 *or applied for through, a mortgage loan originator not licensed*
9 *or registered through the Nationwide Mortgage Licensing System*
10 *and Registry.*

11 SEC. 72. *Section 50205 of the Financial Code is amended to*
12 *read:*

13 50205. (a) A licensee shall maintain a surety bond in
14 accordance with this subdivision. The bond shall be used for the
15 recovery of expenses, fines, and fees levied by the commissioner
16 in accordance with this division or for losses or damages incurred
17 by borrowers or consumers as the result of a licensee's
18 noncompliance with the requirements of this division. *The penal*
19 *sum of the surety bond shall be maintained in an amount that*
20 *reflects the dollar amount of loans originated as determined by*
21 *the commissioner based on loan volume. The surety bond shall*
22 *provide coverage for each mortgage loan originator in an amount*
23 *established by the commissioner, and may not be less than fifty*
24 *thousand dollars (\$50,000). The surety bond shall include the*
25 *origination activities of the mortgage loan originators, pursuant*
26 *to Section 50110.12. The bond shall be payable when the licensee*
27 *fails to comply with a provision of this division and shall be in the*
28 *amount of fifty thousand dollars (\$50,000), and may be increased*
29 *by order of the commissioner to one hundred thousand dollars*
30 *(\$100,000) upon a determination by the commissioner that the*
31 *licensee is not in compliance with any provision of this chapter or*
32 *any rule or order adopted or issued by the commissioner to*
33 *implement or enforce provisions of this chapter. The bond shall*
34 *be payable to the commissioner and issued by an insurance*
35 *company authorized to do business in this state. An original surety*
36 *bond, including any and all riders and endorsements executed*
37 *subsequent to the effective date of the bond, shall be filed with the*
38 *commissioner within 10 days of its execution.*

39 (b) When an action is commenced on a licensee's bond, the
40 commissioner may require the filing of a new bond. Immediately

1 upon the recovery of an action on the bond, the licensee shall file
2 a new bond. Failure to file a new bond within 10 days of the
3 recovery on a bond, or within 10 days after notification by the
4 commissioner that a new bond is required, constitutes sufficient
5 grounds for the suspension or revocation of the license.

6 *SEC. 73. Section 50209 is added to the Financial Code, to*
7 *read:*

8 *50209. (a) Every licensee shall establish a record with the*
9 *Nationwide Mortgage Licensing System and Registry.*

10 *(b) A licensee shall require and ensure that every mortgage*
11 *loan originator employed or compensated by the licensee is*
12 *licensed or registered as a mortgage loan originator under this*
13 *division or another provision of law in this state that meets the*
14 *requirements of Section 1508(d) of Title V of the Secure and Fair*
15 *Enforcement for Mortgage Licensing Act of 2008 (Public Law*
16 *110-289). A licensee shall ensure that every mortgage loan*
17 *originator employed or compensated by the licensee is licensed*
18 *or registered through the Nationwide Mortgage Licensing System*
19 *and Registry and maintains a unique identifier through that system.*

20 *SEC. 74. Section 50309 of the Financial Code is amended to*
21 *read:*

22 *50309. The commissioner—may shall require licensees to*
23 *maintain a file of all advertising copy for a period of 90 days from*
24 *the date of its use. The file shall be available to the commissioner*
25 *upon request.*

26 *SEC. 75. Section 50309.1 is added to the Financial Code, to*
27 *read:*

28 *50309.1. (a) Each licensee, prior to the first use of any*
29 *proposed advertisement with regard to the business subject to this*
30 *division, shall submit a true copy thereof to the commissioner for*
31 *approval.*

32 *(b) If the commissioner, within 15 business days of receipt of*
33 *the advertising copy, determines that the advertising does not*
34 *comply with the requirements of this chapter or appropriate*
35 *regulations, the commissioner shall notify the licensee in writing*
36 *that the advertising is disapproved.*

37 *SEC. 76. Section 50314 of the Financial Code is amended to*
38 *read:*

39 *50314. (a) Every person subject to this division shall keep*
40 *documents and records that will properly enable the commissioner*

1 to determine whether the residential mortgage lending or residential
2 mortgage loan servicing functions performed by that person comply
3 with the provisions of this division and with all rules and orders
4 made by the commissioner under this division. Upon request of
5 the commissioner, residential mortgage lenders and residential
6 mortgage loan servicers shall file an authorization for disclosure
7 to the commissioner of financial records of the licensed business
8 pursuant to Section 7473 of the Government Code.

9 (b) The business documents and records of every residential
10 mortgage lender or residential mortgage loan servicer, whether
11 required to be licensed under this division or not, are subject to
12 inspection and examination by the commissioner at any time
13 without prior notice. The provisions of this subdivision shall not
14 apply to persons specified in subdivision ~~(g)~~ (h) of Section 50003.

15 Any person subject to this division shall, upon request and within
16 the time specified in the request, allow inspection and copying of
17 any documents and records by the commissioner or his or her
18 authorized representative.

19 (c) The cost of every inspection and examination of a licensee
20 or other person subject to this division shall be paid to the
21 commissioner by the licensee or person examined, and the
22 commissioner may maintain an action for the recovery of these
23 costs in any court of competent jurisdiction. In determining the
24 cost of any inspection or examination, the commissioner may use
25 the estimated average hourly cost, including overhead, for all
26 persons performing inspections or examinations of licensees or
27 other persons subject to this division for the fiscal year.

28 For the purpose of this subdivision only, no person other than a
29 licensee shall be deemed to be a person subject to this division
30 unless and until the person is determined to be a person subject to
31 this division by an administrative hearing in accordance with
32 Chapter 5 (commencing with Section 11500) of Part 1 of Division
33 3 of Title 2 of the Government Code, or by a judicial hearing in
34 any court of competent jurisdiction.

35 (d) Investigation and examination reports prepared by the
36 commissioner's duly designated representatives are not public
37 reports. Those reports may be disclosed to the officers or directors
38 of a licensee that is the subject of the report for the purpose of
39 corrective action by the officers or directors. Such a disclosure

1 shall not operate as a waiver of the exemption specified in
2 subdivision (d) of Section 6254 of the Government Code.

3 *SEC. 77. Section 50320 of the Financial Code is amended to*
4 *read:*

5 50320. Whenever, in the opinion of the commissioner, a person
6 is engaged, either actually or through subterfuge, in the business
7 of making residential mortgage loans, *acting as a mortgage loan*
8 *originator*, or servicing residential mortgage loans without a license
9 from the commissioner, the commissioner may order that person
10 to desist and refrain. If, within 30 days after an order is served, a
11 request for a hearing is filed in writing and the hearing is not held
12 within 60 days of the filing, the order is rescinded. This section
13 does not apply to persons exempted under subdivision (g) of
14 Section 50003.

15 *SEC. 78. Section 50700 of the Financial Code is amended to*
16 *read:*

17 50700. (a) A residential mortgage lender, or a person,
18 *mortgage loan originator*, or employee acting under the authority
19 of a residential mortgage lender's license, shall not provide
20 brokerage services to a borrower, except as provided in subdivision
21 (c).

22 (b) "Brokerage services" means either of the following:

23 (1) Obtaining or attempting to obtain, on behalf of a borrower,
24 a residential mortgage loan, as defined in subdivision (o) of Section
25 50003, secured by residential real estate, as defined in subdivision
26 (t) of Section 50003, made with the funds of another institutional
27 lender, as defined in paragraphs (1), (2), and (4) of subdivision (j)
28 of Section 50003, and closed in the name of that lender, for a fee
29 paid by the borrower or the institutional lender.

30 (2) Obtaining or attempting to obtain, on behalf of a borrower,
31 a residential mortgage loan, as defined in subdivision (o) of Section
32 50003, secured by residential real estate, as defined in subdivision
33 (t) of Section 50003, made with the funds of another institutional
34 lender, as defined in paragraphs (1), (2), and (4) of subdivision (j)
35 of Section 50003, but closed in the name of the licensee, for a fee
36 paid by the borrower or the institutional lender.

37 (c) A residential mortgage lender may provide brokerage
38 services under the authority of its license, if the lender first enters
39 into a written brokerage agreement with the borrower that satisfies
40 the requirements of Section 50701.

1 (d) This chapter does not authorize a licensee to do any of the
 2 following:

3 (1) Provide brokerage services through independent contractors.
 4 (2) *Provide brokerage services through an employee not licensed*
 5 *as a mortgage loan originator.*
 6 ~~(2)~~

7 (3) Obtain or attempt to obtain for a borrower a residential
 8 mortgage loan that is a “high cost mortgage,” referred to in Section
 9 152(aa)(1) of the Home Ownership and Equity Protection Act of
 10 1994, as amended (15 U.S.C. Sec. 1602 (aa)).
 11 ~~(3)~~

12 (4) Hold itself out to borrowers, through advertising, as a
 13 mortgage broker, rather than a residential mortgage lender.
 14 However, a licensee shall disclose its status as a broker or agent
 15 when that disclosure is required by law.
 16 ~~(4)~~

17 (5) Perform activity subject to Section 10131 of the Business
 18 and Professions Code, except activities authorized by this division.

19 *SEC. 79. Section 50701 of the Financial Code is amended to*
 20 *read:*

21 50701. (a) As soon as practical after a borrower requests that
 22 the licensee arrange a loan to be made by another institutional
 23 lender, and before the licensee performs brokerage services for
 24 the borrower, the licensee and borrower shall enter into a written
 25 loan brokerage agreement that satisfies the requirements of this
 26 section.

27 (b) Both the licensee’s authorized representative and the
 28 borrower shall sign and date the loan brokerage agreement, and
 29 the licensee shall deliver a copy of the fully executed loan
 30 brokerage agreement to the borrower either upon execution, if the
 31 documents are signed in the licensee’s office, or within three
 32 business days after execution. *The loan brokerage agreement shall*
 33 *include the mortgage loan originator’s unique identifier.*

34 (c) The loan brokerage agreement shall contain an explicit
 35 statement that (1) the licensee is acting as the agent of the borrower
 36 in providing brokerage services to the borrower, and (2) when
 37 acting as agent for the borrower, it owes to that borrower a
 38 fiduciary duty of utmost care, honesty, and loyalty in the
 39 transaction, including the duty of full disclosure of all material
 40 facts. If the licensee is authorized to act as an agent for any other

1 person, the brokerage agreement shall contain a statement of that
2 fact and identification of that person.

3 (d) The loan brokerage agreement shall contain a detailed
4 description of the services the licensee agrees to perform for the
5 borrower, and a good faith estimate of any fees the licensee will
6 receive for those services, whether paid by the borrower, the
7 institutional lender, or both.

8 (e) The loan brokerage agreement shall carry a clear and
9 conspicuous statement of the conditions under which the borrower
10 is obligated to pay the licensee for brokerage services rendered
11 under the agreement.

12 (f) The loan brokerage agreement shall provide that, if the
13 licensee makes a materially false or misleading statement or
14 omission in the inducement or implementation of the agreement,
15 the borrower may, in addition to any other legal rights or remedies,
16 upon written notice, do any of the following:

17 (1) Rescind the brokerage agreement.

18 (2) Recover fees paid by the borrower to the licensee for
19 brokerage services rendered by the licensee pursuant to the
20 agreement.

21 (3) Recover actual costs, including attorney's fees, for enforcing
22 the borrower's rights under the loan brokerage agreement.

23 (g) If the loan brokerage agreement fails to set forth the rights
24 in subdivision (f), these rights shall be implied by operation of
25 law.

26 (h) The loan brokerage agreement shall be the only agreement
27 between the borrower and the licensee with respect to a single
28 loan.

29 (i) A licensee whose services to a borrower are limited to
30 providing brokerage services may not require a borrower to pay
31 fees or charges before the residential mortgage loan closing, other
32 than either of the following:

33 (1) Actual charges to be incurred by the licensee on behalf of
34 the borrower for services from third parties necessary to process
35 the application, such as credit reports, appraisals, inspections, flood
36 certification, and tax service, and, in transactions where those
37 services are provided by the licensee, a charge not to exceed the
38 fee customarily charged for the same or comparable service in the
39 community in which the service was rendered.

40 (2) An application fee.

1 A licensee may not accept a fee under Section 50203(a)(1) or
 2 (2) and subsequently require a borrower to pay additional fees or
 3 charges under this paragraph for the borrower’s loan transaction.

4 (j) Any loan brokerage agreement that provides for the collection
 5 of an application fee shall be approved as to form by the
 6 commissioner before its use by a licensee, if the agreement meets
 7 the following requirements:

8 (1) The agreement specifies the services to be rendered for the
 9 application fee.

10 (2) The agreement sets forth the amount of the application fee
 11 and the date the fee becomes due and payable.

12 (3) The agreement does not contain a provision that purports to
 13 except or relieve the licensee from the responsibility to fulfill
 14 verbal commitments and representations made by employees or
 15 agents of the licensee when contracting for the application fee, or
 16 guarantee that a loan will be obtained.

17 (4) The agreement sets forth a definite date for full performance
 18 of the services promised in exchange for the application fee.

19 *SEC. 80. Section 50705 of the Financial Code is repealed.*

20 ~~50705. Prior to providing brokerage services for a borrower
 21 under this chapter, and thereafter once every four years, every
 22 residential mortgage lender employee who provides brokerage
 23 services shall complete educational courses equivalent to those
 24 described in paragraphs (1) and (2) of subdivision (a) of Section
 25 10170.5 of the Business and Professions Code. This section does
 26 not impose an additional requirement upon an employee who holds
 27 a valid real estate license.~~

28 *SEC. 81. The Legislature finds and declares that Sections 5,
 29 47, and 63 of this act imposes a limitation on the public’s right of
 30 access to the meetings of public bodies or the writings of public
 31 officials and agencies within the meaning of Section 3 of Article
 32 I of the California Constitution. Pursuant to that constitutional
 33 provision, the Legislature makes the following findings to
 34 demonstrate the interest protected by this limitation and the need
 35 for protecting that interest:*

36 *In order to allow the Department of Real Estate and the
 37 Department of Corporations to fully accomplish their goals, it is
 38 imperative to protect the interests of those persons submitting
 39 information to the departments to ensure that any personal or*

1 sensitive business information that this act requires those persons
2 to submit is protected as confidential information.

3 SEC. 82. No reimbursement is required by this act pursuant
4 to Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

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