

AMENDED IN ASSEMBLY JUNE 1, 2009

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~~, 50208, 50307, 50309, 50310, 50311, 50314, 50317, 50318, 50320, 50321, 50322, 50323, 50325, 50326, 50327, 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~~ and 50209 to, and to repeal Section 50705 of, the Financial Code, relating to mortgage lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 34, as amended, Nava. 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~~ education 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~~ *education* 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~~ *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 and would authorize the commissioner ~~to adopt regulations requiring finance lenders and brokers, and residential mortgage lenders or servicers, that employ, by regulation or order, to require~~ 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: 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:
- 3 (a) Congress recently passed H.R. 3221, the Housing and
- 4 Economic Recovery Act of 2008, which was signed into law by
- 5 the President on July 30, 2008, and became Public Law 110-289.
- 6 (b) H.R. 3221 includes, as Title V of Division A of that act, the
- 7 Secure and Fair Enforcement for Mortgage Licensing Act of 2008
- 8 (~~the SAFE ACT~~) *S.A.F.E. Mortgage Licensing Act of 2008*).

1 (c) The activities of mortgage loan originators and the
2 origination or offering of financing for residential real property
3 have a direct, valuable, and immediate impact upon California's
4 consumers, the California economy, California's communities and
5 neighborhoods, and the housing and real estate industry.

6 (d) Accessibility to mortgage credit is vital to California
7 residents.

8 (e) It is essential for the protection of California residents and
9 the stability of the economy that reasonable standards for licensing
10 and regulation of the business practices of mortgage loan
11 originators be imposed.

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

15 (g) The purpose of the ~~SAFE Act~~ *S.A.F.E. Mortgage Licensing*
16 *Act of 2008* is to protect consumers seeking mortgage loans and
17 to ensure that the mortgage lending industry is operating without
18 unfair, deceptive, or fraudulent practices on the part of mortgage
19 loan originators.

20 SEC. 2. Section 10131.8 of the Business and Professions Code
21 is repealed.

22 SEC. 3. Section 10140.6 of the Business and Professions Code
23 is amended to read:

24 10140.6. (a) A real estate licensee shall not publish, circulate,
25 distribute, or cause to be published, circulated, or distributed in
26 any newspaper or periodical, or by mail, any matter pertaining to
27 any activity for which a real estate license is required that does
28 not contain a designation disclosing that he or she is performing
29 acts for which a real estate license is required.

30 (b) (1) A real estate licensee shall disclose his or her license
31 identification number and, if that licensee is a mortgage loan
32 originator, the unique identifier assigned to that licensee by the
33 Nationwide Mortgage Licensing System and Registry, on all
34 solicitation materials intended to be the first point of contact with
35 consumers and on real property purchase agreements when acting
36 as an agent in those transactions. The commissioner may adopt
37 regulations identifying the materials in which a licensee must
38 disclose a license identification number and, if that licensee is a
39 mortgage loan originator, the unique identifier assigned to that

1 licensee by the Nationwide Mortgage Licensing System and
2 Registry.

3 (2) For purposes of this section, “solicitation materials intended
4 to be the first point of contact with consumers” includes business
5 cards, stationery, advertising fliers, and other materials designed
6 to solicit the creation of a professional relationship between the
7 licensee and a consumer, and excludes an advertisement in print
8 or electronic media and “for sale” signs.

9 (3) Nothing in this section shall be construed to limit or change
10 the requirement described in Section 10236.4 as applicable to real
11 estate brokers.

12 (c) The provisions of this section shall not apply to classified
13 rental advertisements reciting the telephone number at the premises
14 of the property offered for rent or the address of the property
15 offered for rent.

16 (d) “Mortgage loan originator,” “unique identifier,” and
17 “Nationwide Mortgage Licensing System and Registry” have the
18 same meanings set forth in Section 10166.01.

19 SEC. 4. Section 10150 of the Business and Professions Code
20 is amended to read:

21 10150. (a) Application for the real estate broker license
22 examination shall be made in writing to the commissioner. The
23 commissioner may prescribe the format and content of the broker
24 examination application. The application for the broker
25 examination shall be accompanied by the real estate broker license
26 examination fee.

27 (b) Persons who have been notified by the commissioner that
28 they passed the real estate broker license examination may apply
29 for a real estate broker license. A person applying for the broker
30 examination may also apply for a real estate broker license.
31 However, a license shall not be issued until the applicant passes
32 the real estate broker license examination. If there is any change
33 to the information contained in a real estate broker license
34 application after the application has been submitted and before the
35 license has been issued, the commissioner may require the applicant
36 to submit a supplement to the application listing the changed
37 information.

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

1 application for the real estate broker license shall be accompanied
2 by the appropriate fee.

3 (d) Application for an endorsement to act as a mortgage loan
4 originator, as defined in Section 10166.01, shall be made either
5 electronically or in writing to the commissioner. The commissioner
6 may prescribe the format and content of the mortgage loan
7 originator endorsement application, which shall meet the minimum
8 requirements for licensing of a mortgage loan originator, pursuant
9 to the Secure and Fair Enforcement for Mortgage Licensing Act
10 of 2008 (Public Law 110-289).

11 SEC. 5. Article 2.1 (commencing with Section 10166.01) is
12 added to Chapter 3 of Division 4 of the Business and Professions
13 Code, to read:

14
15 Article 2.1. Secure and Fair Enforcement for Mortgage Licenses
16

17 10166.01. For purposes of this article, the following definitions
18 shall apply:

19 (a) ~~“SAFE Act”~~ *“S.A.F.E. Mortgage Licensing Act of 2008”*
20 means the Secure and Fair Enforcement for Mortgage Licensing
21 Act of 2008 (Public Law 110-289).

22 (b) (1) *“Mortgage loan originator”* means an individual who
23 takes a residential mortgage loan application or offers or negotiates
24 terms of a residential mortgage loan for compensation or gain. An
25 individual real estate licensee acting within the meaning of
26 paragraph (d) of Section 10131 is a mortgage loan originator for
27 purposes of this article with respect to activities involving
28 residential mortgage loans.

29 (2) Mortgage loan originator does not include any of the
30 following:

31 (A) An individual who performs purely administrative or clerical
32 tasks on behalf of a person meeting the definition of a mortgage
33 loan originator, except as otherwise provided in subdivision (d)
34 of Section 10166.03. The term *“administrative or clerical tasks”*
35 means the receipt, collection, and distribution of information
36 common for the processing or underwriting of a loan in the
37 mortgage industry and communication with a consumer to obtain
38 information necessary for the processing or underwriting of a
39 residential mortgage loan.

1 (B) An individual that is not compensated by a lender, other
2 mortgage loan originator, or by any agent of any lender or other
3 mortgage loan originator.

4 (C) An individual that is solely involved in extensions of credit
5 relating to timeshare plans, as that term is defined in Section
6 101(53D) of Title 11 of the United States Code.

7 (D) An individual licensed or registered as a mortgage loan
8 originator pursuant to the provisions of the Financial Code and the
9 ~~SAFE Act~~ *S.A.F.E. Mortgage Licensing Act of 2008*.

10 (c) “Nationwide Mortgage Licensing System and Registry”
11 means a mortgage licensing system developed and maintained by
12 the Conference of State Bank Supervisors and the American
13 Association of Residential Mortgage Regulators for the licensing
14 and registration of mortgage loan originators.

15 (d) “Residential mortgage loan” means any loan primarily for
16 personal, family, or household use that is secured by a mortgage,
17 deed of trust, or other equivalent consensual security interest on
18 a dwelling, or residential real estate upon which is constructed or
19 intended to be constructed a dwelling. “Dwelling” means a
20 residential structure that contains one to four units, whether or not
21 that structure is attached to real property. The term includes an
22 individual condominium unit, cooperative unit, ~~mobile home~~
23 *mobilehome*, or trailer, if it is used as a residence.

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

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

31 10166.02. (a) A real estate broker who acts pursuant to Section
32 10131.1 or subdivision (d) or (e) of Section 10131, and who makes,
33 arranges, or services loans secured by real property containing one
34 to four residential units, shall notify the department within 30 days
35 of the effective date of this section or upon commencing that
36 activity, whichever is later. The notification shall be made in
37 writing on a form that is acceptable to the commissioner.

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

1 (1) Obtaining and maintaining a real estate license pursuant to
2 Article 2 (commencing with Section 10150).
3 (2) Obtaining and maintaining a real estate license endorsement
4 identifying that individual as a licensed mortgage loan originator.
5 (c) License endorsements shall be valid for a period of one year
6 and shall expire on the 31st of December each year.
7 (d) Applicants for a mortgage loan originator license
8 endorsement shall apply in a form prescribed by the commissioner.
9 Each form shall contain content as set forth by rule, regulation,
10 instruction, or procedure of the commissioner.
11 (e) In order to fulfill the purposes of this article, the
12 commissioner may establish relationships or contracts with the
13 Nationwide Mortgage Licensing System and Registry or other
14 entities designated by the Nationwide Mortgage Licensing System
15 and Registry to collect and maintain records and process transaction
16 fees or other fees related to licensees or other persons subject to
17 this article.
18 (f) A real estate broker who fails to notify the department
19 pursuant to subdivision (a), or who fails to obtain a license
20 endorsement required pursuant to subdivision (b), shall be assessed
21 a penalty of fifty dollars (\$50) per day for each day written
22 notification has not been received or a license endorsement has
23 not been obtained, up to and including the 30th day after the first
24 day of the assessment penalty. On and after the 31st day, the
25 penalty is one hundred dollars (\$100) per day, not to exceed a total
26 penalty of ten thousand dollars (\$10,000), regardless of the number
27 of days, until the department receives the written notification or
28 the licensee obtains the license endorsement. Penalties for
29 violations of subdivisions (a) and (b) shall be additive.
30 (g) The commissioner may suspend or revoke the license of a
31 real estate broker who fails to pay a penalty imposed pursuant to
32 this section. In addition, the commissioner may bring an action in
33 an appropriate court of this state to collect payment of that penalty.
34 (h) All penalties paid or collected under this section shall be
35 deposited into the Recovery Account of the Real Estate Fund and
36 shall, upon appropriation by the Legislature, be available for
37 expenditure for the purposes specified in Chapter 6.5 (commencing
38 with Section 10470).
39 10166.03. (a) A loan processor or underwriter who does not
40 represent to the public, through advertising or other means of

1 communicating or providing information, including the use of
2 business cards, stationery, brochures, signs, rate lists, or other
3 promotional items, that the individual can or will perform any of
4 the activities of a mortgage loan originator shall not be required
5 to obtain a license endorsement as a mortgage loan originator.

6 (b) 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 (c) An independent contractor who is employed by a mortgage
14 loan originator may not engage in the activities of a loan processor
15 or underwriter for a residential mortgage loan unless the
16 independent contractor loan processor or underwriter obtains and
17 maintains an endorsement as a mortgage loan originator under this
18 article. Each independent contractor loan processor or underwriter
19 who obtains and maintains an endorsement as a mortgage loan
20 originator under this article shall have and maintain a valid unique
21 identifier issued by the Nationwide Mortgage Licensing System
22 and Registry.

23 10166.04. (a) In connection with an application to the
24 commissioner for a license endorsement as a mortgage loan
25 originator, every applicant shall furnish to the Nationwide
26 Mortgage Licensing System and Registry information concerning
27 the applicant's identity, including the following:

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

30 (2) Personal history and experience in a form prescribed by the
31 Nationwide Mortgage Licensing System and Registry, including
32 the submission of authorization for the Nationwide Mortgage
33 Licensing System and Registry and the commissioner to obtain
34 both of the following:

35 (A) An independent credit report from a consumer reporting
36 agency.

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

39 (b) If the Nationwide Mortgage Licensing System and Registry
40 electronically submits fingerprint images and related information,

1 as required by the Department of Justice, for an applicant for a
2 mortgage loan originator license endorsement, to the Department
3 of Justice for the purposes of obtaining information as to the
4 existence and content of a record of state convictions and state
5 arrests, and as to the existence and content of a record of state
6 arrests for which the Department of Justice establishes that the
7 person is free on bail or on his or her *own* recognizance pending
8 trial or appeal, the Department of Justice shall provide an electronic
9 response to the Nationwide Mortgage Licensing System and
10 Registry pursuant to paragraph (1) of subdivision (p) of Section
11 11105 of the Penal Code, and shall provide the same electronic
12 response to the department.

13 (c) The Nationwide Mortgage Licensing System and Registry
14 may request from the Department of Justice subsequent arrest
15 notification service, as provided pursuant to Section 11105.2 of
16 the Penal Code, for persons described in subdivision (a). If
17 requested by the department, the Department of Justice shall
18 provide the same electronic response to the department.

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

21 10166.05. Notwithstanding any other provision of law, the
22 commissioner shall not issue a license endorsement to act as a
23 mortgage loan originator to an applicant unless the commissioner
24 makes all of the following findings:

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

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

32 (1) During the ~~seven-year~~ *seven-year* period preceding the date
33 of the application for licensing.

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

37 (c) The applicant has demonstrated such financial responsibility,
38 character, and general fitness as to command the confidence of
39 the community and warrant a determination that the mortgage loan

1 originator will operate honestly, fairly, and efficiently within the
2 purposes of the article.

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

5 10166.06. (a) In addition to the requirements of Section 10153,
6 an applicant for a license endorsement as a mortgage loan
7 originator shall complete at least 20 hours of education courses,
8 which shall include at least the following:

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

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

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

14 (b) For purposes of this section, education courses are only
15 acceptable if they have been reviewed and approved, or otherwise
16 deemed acceptable, by the Nationwide Mortgage Licensing System
17 and Registry, in accordance with the ~~SAFE Act~~ *S.A.F.E. Mortgage*
18 *Licensing Act of 2008*, and by the commissioner. Education may
19 be offered in a classroom, online, or by any other means approved
20 by the Nationwide Mortgage Licensing System and Registry, in
21 accordance with the ~~SAFE Act~~ *S.A.F.E. Mortgage Licensing Act*
22 *of 2008*, and by the commissioner. The commissioner may
23 substitute any of the courses described in subdivision (a) for the
24 course requirements of Section 10153.2, 10153.3, 10153.4, or
25 10153.5, subject to a finding that the course requirements in
26 subdivision (a) are substantially equivalent to, and meet the intent
27 of, Section 10153.2, 10153.3, 10153.4, or 10153.5, as applicable.

28 (c) A person who successfully completes the education
29 requirements approved by the Nationwide Mortgage Licensing
30 System and Registry in any state other than California shall be
31 granted credit by the commissioner toward completion of the
32 education requirements of this section.

33 (d) Before being issued a license endorsement to act as a
34 mortgage loan originator, an individual shall pass a qualified
35 written test developed or otherwise deemed acceptable by the
36 Nationwide Mortgage Licensing System and Registry and
37 administered by a test provider approved or otherwise deemed
38 acceptable by the Nationwide Mortgage Licensing System and
39 Registry.

1 (e) A written test shall not be treated as a qualified written test
2 for purposes of this section, unless the test adequately measures
3 the applicant's knowledge and comprehension in the following
4 subject areas: ethics, federal law and regulation pertaining to
5 mortgage origination, state law and regulation pertaining to
6 mortgage origination, and federal and state law and regulation
7 relating to fraud, consumer protection, the nontraditional mortgage
8 marketplace, and fair lending issues.

9 (f) 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 any subsidiary or affiliate of the employer of the applicant, or any
13 entity with which the applicant holds an exclusive arrangement to
14 conduct the business of a mortgage loan originator.

15 (g) An individual shall not be considered to have passed a
16 qualified written test administered pursuant to this section unless
17 the individual achieves a test score of not less than 75 percent
18 correct answers to questions.

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

22 (i) An applicant who fails three consecutive retests must wait
23 at least six months before retesting.

24 (j) A mortgage loan originator who fails to maintain a valid
25 license endorsement for a period of five years or longer or who
26 fails to register as a mortgage loan originator in accordance with
27 applicable California law shall retake the qualified written test.

28 10166.07. (a) A real estate broker who acts pursuant to Section
29 10131.1 or subdivision (d) or (e) of Section 10131, and who makes,
30 arranges, or services one or more loans in a calendar year that are
31 secured by real property containing one to four residential units,
32 shall annually file a business activities report, within 90 days after
33 the end of the broker's fiscal year or within any additional time as
34 the commissioner may allow for filing for good cause. The report
35 shall contain within its scope all of the following information for
36 the fiscal year, relative to the business activities of the broker and
37 those of any other brokers and real estate salespersons acting under
38 that broker's supervision:

39 (1) Name and license number of the supervising broker and
40 names and license numbers of the real estate brokers and

1 salespersons under that broker's supervision. The report shall
2 include brokers and salespersons who were under the supervising
3 broker's supervision for all or part of the year.

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

8 (A) Activities relating to mortgages, including arranging,
9 making, or servicing.

10 (B) Other activities performed under the real estate broker's or
11 salesperson's license.

12 (C) Activities performed under related licenses, including, but
13 not limited to, a license to engage as a finance lender or a finance
14 broker under the California Finance Lenders Law (Division 9
15 (commencing with Section 22000) of the Financial Code), or a
16 license to engage as a residential mortgage lender or residential
17 mortgage loan servicer under the California Residential Mortgage
18 Lending Act (Division 20 (commencing with Section 50000) of
19 the Financial Code).

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

23 (4) For fixed rate loans made, brokered, or serviced, all of the
24 following:

25 (A) The total number, aggregate principal amount, lowest
26 interest rate, highest interest rate, and a list of the institutional
27 lenders of record. If the loan was funded by any lender other than
28 an institutional lender, the broker shall categorize the loan as
29 privately funded.

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

32 (C) The total number and aggregate principal amount of loans
33 for which Department of Real Estate form RE Form 885 or an
34 equivalent is required.

35 (5) For adjustable rate loans made, brokered, or serviced, all of
36 the following:

37 (A) The total number, aggregate principal amount, lowest
38 beginning interest rate, highest beginning interest rate, highest
39 margin, and a list of the institutional lenders of record. If the loan

1 was funded by any lender other than an institutional lender, the
2 broker shall categorize the loan as privately funded.

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

5 (C) The total number and aggregate principal amount of loans
6 for which Department of Real Estate form RE Form 885 or an
7 equivalent is required.

8 (6) For all loans made, brokered, or serviced, the total number
9 and aggregate principal amount of loans funded by institutional
10 lenders, and the total number and aggregate principal amount of
11 loans funded by private lenders.

12 (7) For all loans made, brokered, or serviced, the total number
13 and aggregate principal amount of loans that included a prepayment
14 penalty, the minimum prepayment penalty length, the maximum
15 prepayment penalty length, and the number of loans with
16 prepayment penalties whose length exceeded the length of time
17 before the borrower's loan payment amount could increase.

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

22 (9) For all mortgage loans made or brokered, the total number
23 of loans for which a mortgage loan disclosure statement was
24 provided in a language other than English, and the number of forms
25 provided per language other than English.

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

29 (11) For purposes of this section, an institutional lender has the
30 meaning specified in paragraph (1) of subdivision (c) of Section
31 10232.

32 (b) A broker subject to this section and Section 10232.2 may
33 file consolidated reports that include all of the information required
34 under this section and Section 10232.2. Those consolidated reports
35 shall clearly indicate that they are intended to satisfy the
36 requirements of both sections.

37 (c) If a broker subject to this section fails to timely file the report
38 required under this section, the commissioner may cause an
39 examination and report to be made and may charge the broker one
40 and one-half times the cost of making the examination and report.

1 In determining the hourly cost incurred by the commissioner for
2 conducting an examination and preparing the report, the
3 commissioner may use the estimated average hourly cost for all
4 department audit staff performing audits of real estate brokers. If
5 a broker fails to pay the commissioner's cost within 60 days of the
6 mailing of a notice of billing, the commissioner may suspend the
7 broker's license or deny renewal of that license. The suspension
8 or denial shall remain in effect until the billed amount is paid or
9 the broker's right to renew a license has expired. The commissioner
10 may maintain an action for the recovery of the billed amount in
11 any court of competent jurisdiction.

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

15 10166.08. Each mortgage loan originator shall submit reports
16 of condition to the Nationwide Mortgage Licensing System and
17 Registry reports of condition, and those reports shall be in the form
18 and shall contain information as the Nationwide Mortgage
19 Licensing System and Registry may require.

20 10166.09. The minimum standards for renewal of an
21 endorsement as a mortgage loan originator shall include the
22 following:

23 (a) The mortgage loan originator continues to meet the minimum
24 standards for obtaining an endorsement as a mortgage loan
25 originator.

26 (b) The mortgage loan originator satisfies the annual continuing
27 education requirements described in Section 10166.10.

28 10166.10. (a) A mortgage loan originator shall complete at
29 least eight hours of continuing education annually, which shall
30 include at least three hours relating to federal law and regulations,
31 two hours of ethics, which shall include instruction on fraud,
32 consumer protection, and fair lending issues, and two hours related
33 to lending standards for the nontraditional mortgage product
34 marketplace.

35 (b) For purposes of subdivision (a), continuing education courses
36 and course providers shall be reviewed and approved by the
37 commissioner and the Nationwide Mortgage Licensing System
38 and Registry.

39 (c) The commissioner shall have the authority to substitute any
40 of the courses described in subdivision (a) for the course

1 requirements of Section 10170.5, subject to a finding that the
2 course requirements in subdivision (a) are substantially equivalent
3 to, and meet the intent of, Section 10170.5.

4 (d) Nothing in this section shall preclude any education course,
5 as approved by the commissioner and the Nationwide Mortgage
6 Licensing System and Registry, that is provided by the employer
7 of the mortgage loan originator or an entity that is affiliated with
8 the mortgage loan originator by an agency contract, or any
9 subsidiary or affiliate of the employer or entity.

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

13 (f) A mortgage loan originator may only receive credit for a
14 continuing education course in the year in which the course is
15 taken.

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

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

23 (i) A person who successfully completes the education
24 requirements approved by the Nationwide Mortgage Licensing
25 System and Registry in any state other than California shall be
26 granted credit by the commissioner towards completion of
27 continuing education requirements in this state.

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

33 10166.11. (a) A real estate broker who acts pursuant to Section
34 10131.1 or subdivision (d) or (e) of Section 10131 and who makes,
35 arranges, or services loans secured by real property containing one
36 to four residential units, shall keep documents and records that
37 will properly enable the commissioner to determine whether the
38 residential mortgage brokerage, servicing, and lending functions
39 performed by the broker comply with this division and with all
40 applicable rules and orders made by the commissioner. These

1 documents shall include, at a minimum, the documents described
2 in Section 10148. Upon request of the commissioner, a real estate
3 broker shall file an authorization for disclosure to the commissioner
4 of financial records of his or her licensed business pursuant to
5 Section 7473 of the Government Code.

6 (b) Notwithstanding subdivision (a) of Section 10148, the
7 business documents and records of real estate brokers described
8 in subdivision (a) and real estate salespersons acting under those
9 brokers are subject to inspection and examination or audit by the
10 commissioner, at his or her discretion, after reasonable notice.
11 That real estate broker or salesperson shall, upon request by the
12 commissioner and within the time period specified in that request,
13 allow the commissioner, or his or her authorized representative,
14 to inspect and copy any business documents and records. The
15 commissioner may suspend or revoke the license of the broker or
16 salesperson if he or she fails to produce documents or records
17 within the time period specified in the request.

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

25 10166.12. (a) As often as the commissioner deems necessary
26 and appropriate, the commissioner shall examine the affairs of
27 each real estate broker who is required to notify the commissioner
28 or obtain a license endorsement pursuant to Section 10166.02 for
29 compliance with this part. These examinations shall also include
30 a review of the affairs of all real estate brokers and real estate
31 salespersons acting under the supervision of each real estate broker
32 who is required to file reports with the department pursuant to
33 Section 10166.07. The commissioner shall appoint suitable persons
34 to perform these examinations. The commissioner and his or her
35 appointees may examine the books, records, and documents of the
36 licensee, and may examine the licensee's officers, directors,
37 employees, or agents under oath regarding the licensee's
38 operations. The commissioner may cooperate with any agency of
39 the state or federal government, other states, agencies, the Federal
40 National Mortgage Association, or the Federal Home Loan

1 Mortgage Corporation. The commissioner may accept an
2 examination conducted by one of these entities in place of an
3 examination by the commissioner under this section, unless the
4 commissioner determines that the examination does not provide
5 information necessary to enable the commissioner to fulfill his or
6 her responsibilities under this division.

7 (b) The commissioner may impose a penalty against a real estate
8 broker or real estate salesperson whose affairs are examined or
9 reviewed pursuant to subdivision (a) based on the findings of the
10 examination or review. The commissioner may suspend or revoke
11 the license or license endorsement of a real estate broker or real
12 estate salesperson who fails to pay that penalty. In addition, the
13 commissioner may bring an action in an appropriate court of this
14 state to collect payment of the penalty.

15 (c) Penalties collected pursuant to subdivision (b) shall be
16 deposited into the Recovery Account of the Real Estate Fund and
17 shall, upon appropriation by the Legislature, be available for
18 expenditure for the purposes specified in Chapter 6.5 (commencing
19 with Section 10470).

20 (d) The statement of the findings of an examination conducted
21 pursuant to this section shall belong to the commissioner and shall
22 not be disclosed to anyone other than the licensee, law enforcement
23 officials, or other state or federal regulatory agencies for further
24 investigation and enforcement. Reports required of licensees by
25 the commissioner under this division and results of examinations
26 performed by the commissioner under this division are the property
27 of the commissioner.

28 10166.13. A real estate broker who acts pursuant to Section
29 10131.1 or subdivision (d) or (e) of Section 10131 and who makes,
30 arranges, or services loans secured by real property containing one
31 to four residential units shall make any special reports to the
32 commissioner that the commissioner may, from time to time,
33 require.

34 10166.14. A real estate broker shall notify the department when
35 he or she is no longer subject to this part. If a broker has already
36 made reports required by Sections 10166.07 and 10166.08 within
37 the year, he or she shall continue reports for that year, but shall
38 notify the department prior to the expiration of that year that he
39 or she will no longer be subject to this part in the succeeding year.

1 10166.15. (a) The commissioner shall regularly report
2 violations of this article, as well as enforcement actions taken
3 against any mortgage loan originator to whom an endorsement has
4 been issued, and enforcement actions taken against any individual
5 for failure to obtain an endorsement as a mortgage loan originator,
6 to the Nationwide Mortgage Licensing System and Registry.

7 (b) The commissioner shall establish a process that may be used
8 by mortgage loan originators to challenge information entered into
9 the Nationwide Mortgage Licensing System and Registry by the
10 commissioner.

11 (c) The commissioner is authorized to promulgate regulations
12 specifying (1) the recordkeeping requirements that mortgage loan
13 originators shall satisfy and (2) the penalties that shall apply to
14 mortgage loan originators for violations of this article.

15 10166.16. (a) Except as otherwise provided in Section 1512
16 of the ~~SAFE Act~~ *S.A.F.E. Mortgage Licensing Act of 2008*, the
17 requirements under any federal or state law regarding the privacy
18 or confidentiality of any information or material provided to the
19 Nationwide Mortgage Licensing System and Registry, and any
20 privilege arising under federal or state law, including the rules of
21 any federal or state court, with respect to that information or
22 material, shall continue to apply to the information or material
23 after the information or material has been disclosed to the
24 Nationwide Mortgage Licensing System and Registry. The
25 information and material may be shared with all state and federal
26 regulatory officials with mortgage industry oversight authority
27 without the loss of privilege or the loss of confidentiality
28 protections provided by federal or state law.

29 (b) For these purposes, the commissioner is authorized to enter
30 agreements or sharing arrangements with other governmental
31 agencies, the Conference of State Bank Supervisors, the American
32 Association of Residential Mortgage Regulators, or other
33 associations representing governmental agencies as established by
34 rule, regulation, or order of the commissioner.

35 (c) Information or material that is subject to a privilege or
36 confidentiality under subdivision (a) shall not be subject to either
37 of the following:

38 (1) Disclosure under any state law governing the disclosure to
39 the public of information held by an officer or an agency of the
40 state.

1 (2) Subpoena or discovery, or admission into evidence, in any
2 private civil action or administrative process, unless with respect
3 to any privilege held by the Nationwide Mortgage Licensing
4 System and Registry with respect to the information or material,
5 the person to whom the information or material pertains waives,
6 in whole or in part, in the discretion of the person, that privilege.

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

12 10166.17. In addition to any other duties imposed upon the
13 commissioner by law, the commissioner shall require mortgage
14 loan originators to be licensed and registered through the
15 Nationwide Mortgage Licensing System and Registry. In order to
16 carry out this requirement the commissioner is authorized to
17 participate in the Nationwide Mortgage Licensing System and
18 Registry. For this purpose, the commissioner may establish by
19 rule, regulation, or order, requirements as necessary, including,
20 but not limited to, the following:

21 (a) Background checks for the following:

22 (1) Criminal history through fingerprint or other databases.

23 (2) Civil or administrative records.

24 (3) Credit history.

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

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

29 (c) The setting or resetting as necessary of renewal or reporting
30 dates.

31 (d) Requirements for amending or surrendering a license or any
32 other activities as the commissioner deems necessary for
33 participation in the Nationwide Mortgage Licensing System and
34 Registry.

35 ~~SEC. 6. Section 10232.1 of the Business and Professions Code~~
36 ~~is amended to read:~~

37 ~~10232.1. (a) A real estate broker, prior to the use of any~~
38 ~~proposed advertisement in connection with the conduct of activities~~
39 ~~described in subdivisions (d) and (e) of Section 10131 and Section~~
40 ~~10131.1, shall submit a true copy thereof to the Department of~~

1 Real Estate for approval. The submission shall be accompanied
2 by a fee of not more than forty dollars (\$40). The commissioner
3 shall by regulation prescribe the amount of the fee. If disapproval
4 of the proposed advertisement is not communicated by the
5 department to the broker within 15 calendar days after receipt of
6 the copy of the proposed advertisement by the department, the
7 proposed advertisement shall be deemed approved, but the
8 department shall not be precluded from disapproving a later
9 publication or other use of the same or similar advertising.

10 The commissioner shall adopt regulations pertaining to the
11 submittal and clearance of that advertising and establishing criteria
12 for approval to ensure that the public will be protected against
13 false or misleading representations.

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

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

23 (1) It is restricted in distribution to other real estate brokers and
24 to persons for whom the broker has previously acted as an agent
25 in arranging a loan secured by real property or in the purchase,
26 sale, or exchange of a deed of trust or real property sales contract.

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

31 (e) Subdivision (a) is not applicable to advertising that is used
32 exclusively in connection with an offering authorized by permit
33 issued pursuant to the applicable provisions of the Corporate
34 Securities Law of 1968 (Division 1 (commencing with Section
35 25000 of Title 4 of the Corporations Code).

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

1 ~~SEC. 7.~~

2 *SEC. 6.* Section 10235.5 of the Business and Professions Code
3 is amended to read:

4 10235.5. (a) No real estate licensee or mortgage loan originator
5 shall place an advertisement disseminated primarily in this state
6 for a loan unless there is disclosed within the printed text of that
7 advertisement, or the oral text in the case of a radio or television
8 advertisement, the Department of Real Estate license number and
9 the unique identifier assigned to that licensee by the Nationwide
10 Mortgage Licensing System and Registry under which the loan
11 would be made or arranged, and that the advertisement has been
12 approved by the commissioner.

13 (b) “Mortgage loan originator,” “unique identifier,” and
14 “Nationwide Mortgage Licensing System and Registry” have the
15 same meanings set forth in Section 10166.01.

16 ~~SEC. 8.~~

17 *SEC. 7.* Section 10236.4 of the Business and Professions Code
18 is amended to read:

19 10236.4. (a) In compliance with Section 10235.5, every
20 licensed real estate broker shall also display his or her license
21 number on all advertisements where there is a solicitation for
22 borrowers or potential investors. Every mortgage loan originator,
23 as defined in Section 10166.01, shall also display the unique
24 identifier assigned to that individual by the Nationwide Mortgage
25 Licensing System and Registry on all advertisements where there
26 is a solicitation for borrowers.

27 (b) The disclosures required by Sections 10232.4 and 10240
28 shall include the licensee’s license number, the mortgage
29 originator’s unique identifier, if applicable, and the department’s
30 license information telephone number.

31 (c) “Mortgage loan originator,” “unique identifier,” and
32 “Nationwide Mortgage Licensing System and Registry” have the
33 same meanings set forth in Section 10166.01.

34 ~~SEC. 9.~~

35 *SEC. 8.* Section 22012 is added to the Financial Code, to read:

36 22012. “Depository institution” has the same meaning as in
37 Section 3 of the Federal Deposit Insurance Act, and includes any
38 credit union.

39 ~~SEC. 10.~~

40 *SEC. 9.* Section 22013 is added to the Financial Code, to read:

1 22013. “Federal banking agencies” means the Board of
2 Governors of the Federal Reserve System, the Comptroller of the
3 Currency, the Director of the Office of Thrift Supervision, the
4 National Credit Union Administration, and the Federal Deposit
5 Insurance Corporation.

6 ~~SEC. 11.~~

7 *SEC. 10.* Section 22014 is added to the Financial Code, to read:

8 22014. “Immediate family member” means a spouse, child,
9 sibling, parent, grandparent, or grandchild. This includes
10 stepparents, stepchildren, stepsiblings, and adoptive relationships.

11 ~~SEC. 12.~~

12 *SEC. 11.* Section 22015 is added to the Financial Code, to read:

13 22015. “Individual” means a natural person.

14 ~~SEC. 13.~~

15 *SEC. 12.* Section 22016 is added to the Financial Code, to read:

16 22016. (a) “Loan processor or underwriter” means an
17 individual who performs clerical or support duties as an employee
18 at the direction of and subject to the supervision and instruction
19 of a person licensed, or exempt from licensing under Section 22194
20 of the Financial Code.

21 (b) For purposes of subdivision (a), the term “clerical or support
22 duties” may include the following, subsequent to the receipt of an
23 application:

24 (1) The receipt, collection, distribution, and analysis of
25 information common for the processing or underwriting of a
26 residential mortgage loan.

27 (2) Communicating with a consumer to obtain the information
28 necessary for the processing or underwriting of a loan, to the extent
29 that communication does not include offering or negotiating loan
30 rates or terms, or counseling consumers about residential mortgage
31 loan rates or terms.

32 (c) An individual engaging solely in loan processor or
33 underwriter activities shall not represent to the public, through
34 advertising or other means of communicating or providing
35 information, including the use of business cards, stationery,
36 brochures, signs, rate lists, or other promotional items, that the
37 individual can or will perform any of the activities of a mortgage
38 loan originator.

39 ~~SEC. 14.~~

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

1 22017. (a) “Mortgage loan originator” means an individual
2 who for compensation or gain or in the expectation of
3 compensation or gain does any of the following:

- 4 (1) Takes a residential mortgage loan application.
5 (2) Offers or negotiates terms of a residential mortgage loan.

6 (b) “Mortgage loan originator” does not include any of the
7 following:

8 (1) An individual engaged solely as a loan processor or
9 underwriter, except as otherwise provided in subdivision (d) of
10 Section 22194.

11 (2) A person or entity that only performs real estate brokerage
12 activities and is licensed or registered in accordance with California
13 law, unless the person or entity is compensated by a lender, a
14 mortgage broker, or other mortgage loan originator or by any agent
15 of that lender, mortgage broker, or other mortgage loan originator.

16 (3) A person or entity solely involved in extensions of credit
17 relating to timeshare plans, as that term is defined in Section
18 101(53D) of Title 11 of the United States Code.

19 ~~SEC. 15.~~

20 *SEC. 14.* Section 22018 is added to the Financial Code, to read:

21 22018. “Nationwide Mortgage Licensing System and Registry”
22 means a mortgage licensing system developed and maintained by
23 the Conference of State Bank Supervisors and the American
24 Association of Residential Mortgage Regulators for the licensing
25 and registration of licensed mortgage loan originators.

26 ~~SEC. 16.~~

27 *SEC. 15.* Section 22019 is added to the Financial Code, to read:

28 22019. “Nontraditional mortgage product” means any mortgage
29 product other than a 30-year fixed rate mortgage, except as
30 provided in Section 22171 and the regulations adopted thereunder.

31 ~~SEC. 17.~~

32 *SEC. 16.* Section 22020 is added to the Financial Code, to read:

33 22020. “Registered mortgage loan originator” means any
34 individual who:

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

- 37 (1) A depository institution.
38 (2) A subsidiary that is owned and controlled by a depository
39 institution and regulated by a federal banking agency.
40 (3) An institution regulated by the Farm Credit Administration.

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

3 ~~SEC. 18.~~

4 *SEC. 17.* Section 22021 is added to the Financial Code, to read:

5 22021. “Residential mortgage loan” means any loan primarily
6 for personal, family, or household use that is secured by a
7 mortgage, deed of trust, or other equivalent consensual security
8 interest on a dwelling, as defined in Section 103(v) of the Truth
9 in Lending Act, or residential real estate upon which is constructed
10 or intended to be constructed a dwelling. “Dwelling” means a
11 residential structure that contains one to four units, whether or not
12 that structure is attached to real property. The term includes an
13 individual condominium unit, cooperative unit, ~~mobile home~~
14 *mobilehome*, or trailer, if it is used as a residence.

15 ~~SEC. 19.~~

16 *SEC. 18.* Section 22022 is added to the Financial Code, to read:

17 22022. “Residential real estate” means, *for the purposes of a*
18 *mortgage loan originator license only*, any real property located
19 in this state, upon which is constructed or intended to be
20 constructed a dwelling.

21 ~~SEC. 20.~~

22 *SEC. 19.* Section 22023 is added to the Financial Code, to read:

23 22023. “Unique identifier” means a number or other identifier
24 assigned by protocols established by the Nationwide Mortgage
25 Licensing System and Registry.

26 ~~SEC. 21.~~

27 *SEC. 20.* Section 22101 of the Financial Code is amended to
28 read:

29 22101. (a) An application for a finance lender or broker license
30 under this division shall be in the form and contain the information
31 that the commissioner may by rule require and shall be filed upon
32 payment of the fee specified in Section 22103.

33 (b) Notwithstanding any other provision of law, an applicant
34 who does not currently hold a license as a finance lender or broker
35 under this division shall furnish with his or her application, a full
36 set of fingerprints and related information for purposes of the
37 commissioner conducting a criminal history record check. The
38 commissioner shall obtain and receive criminal history information
39 from the Department of Justice and the Federal Bureau of
40 Investigation pursuant to Section 22101.5.

1 (c) Nothing in this section shall be construed to prevent a
2 licensee from engaging in the business of a finance lender through
3 a subsidiary corporation if the subsidiary corporation is licensed
4 pursuant to this division.

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

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

11 (f) Notwithstanding any other provision of this section, the
12 commissioner may by rule require an application to be made
13 through the Nationwide Mortgage Licensing System and Registry,
14 and may require fees, fingerprints, financial statements, supporting
15 documents, changes of address, any other information, and
16 amendments or modifications thereto, to be submitted in the same
17 manner.

18 ~~SEC. 22.~~

19 *SEC. 21.* Section 22101.5 of the Financial Code is amended
20 to read:

21 22101.5. (a) The commissioner shall submit to the Department
22 of Justice fingerprint images and related information required by
23 the Department of Justice of all license candidates, as defined by
24 subdivision (a) of Section 22101, for purposes of obtaining
25 information as to the existence and content of a record of state or
26 federal convictions, state or federal arrests, and information as to
27 the existence and content of a record of state or federal arrests for
28 which the Department of Justice establishes that the person is free
29 on bail or on his or her own recognizance pending trial or appeal.

30 (b) When received, the Department of Justice shall forward to
31 the Federal Bureau of Investigation requests for federal summary
32 criminal history information received pursuant to this section. The
33 Department of Justice shall review the information returned from
34 the Federal Bureau of Investigation and compile and disseminate
35 a response to the commissioner.

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

39 (d) The commissioner shall request from the Department of
40 Justice subsequent arrest notification service, as provided pursuant

1 to Section 11105.2 of the Penal Code, for license candidates
2 described in subdivision (a).

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

5 (f) Notwithstanding any other provision in this section, the
6 commissioner may by rule require fingerprints submitted by an
7 applicant to be submitted to the Nationwide Mortgage Licensing
8 System and Registry in addition to the Department of Justice.

9 ~~SEC. 23.~~

10 *SEC. 22.* Section 22102 of the Financial Code is amended to
11 read:

12 22102. (a) A licensee seeking to engage in business at a new
13 location shall submit an application to the commissioner by
14 certified mail, return receipt requested, at least 10 days before
15 engaging in business at a new location and pay the fee required
16 by Section 22103.

17 (b) The commissioner, by regulation, shall adopt a form for the
18 application required by this section. The application shall contain
19 the following information:

20 (1) The address of the new location.

21 (2) Information on the person responsible for the lending activity
22 at the new location.

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

24 (c) The licensee may engage in business at the new location 10
25 days after the date of mailing the application to engage in business
26 at that location.

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

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

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

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

1 (g) A license to engage in business at a new location shall be
2 issued in accordance with this section. A change of street address
3 of a place of business designated in a license shall be made in
4 accordance with Section 22153 and shall not constitute a new
5 location subject to the requirements of this section.

6 (h) Notwithstanding any other provision in this section, the
7 commissioner may by rule require a licensee to submit applications
8 to engage in business at a new location through the Nationwide
9 Mortgage Licensing System and Registry.

10 ~~SEC. 24.~~

11 *SEC. 23.* Section 22104 of the Financial Code is amended to
12 read:

13 22104. The applicant shall file with the application financial
14 statements prepared in accordance with generally accepted
15 accounting principles and acceptable to the commissioner that
16 indicate a net worth of at least twenty-five thousand dollars
17 (\$25,000). A licensee shall maintain a net worth of at least
18 twenty-five thousand dollars (\$25,000) at all times. A finance
19 lender or broker engaged in the business of making or brokering
20 residential mortgage loans shall maintain a net worth of at least
21 two hundred fifty thousand dollars (\$250,000).

22 ~~SEC. 25.~~

23 *SEC. 24.* Section 22107 of the Financial Code is amended to
24 read:

25 22107. (a) Each licensee shall pay to the commissioner its pro
26 rata share of all costs and expenses reasonably incurred in the
27 administration of this division, as estimated by the commissioner,
28 for the ensuing year and any deficit actually incurred or anticipated
29 in the administration of the program in the year in which the
30 assessment is made. The pro rata share shall be the proportion that
31 a licensee's gross income bears to the aggregate gross income of
32 all licensees as shown by the annual financial reports to the
33 commissioner, for the costs and expenses remaining after the
34 amount assessed pursuant to subdivision (c).

35 (b) On or before the 30th day of May in each year, the
36 commissioner shall notify each licensee by mail of the amount
37 assessed and levied against it and that amount shall be paid within
38 20 days thereafter. If payment is not made within 20 days, the
39 commissioner shall assess and collect a penalty, in addition to the

1 assessment, of 1 percent of the assessment for each month or part
2 of a month that the payment is delayed or withheld.

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

6 (d) If a licensee fails to pay the assessment on or before the 30th
7 day of June following the day upon which payment is due, the
8 commissioner may by order summarily suspend or revoke the
9 certificate issued to the licensee. If, after an order is made, a request
10 for hearing is filed in writing within 30 days, and a hearing is not
11 held within 60 days thereafter, the order is deemed rescinded as
12 of its effective date. During any period when its certificate is
13 revoked or suspended, a licensee shall not conduct business
14 pursuant to this division except as may be permitted by order of
15 the commissioner. However, the revocation, suspension, or
16 surrender of a certificate shall not affect the powers of the
17 commissioner as provided in this division.

18 (e) Notwithstanding any other provision in this section, the
19 commissioner may by rule require a licensee to ~~submit applications~~
20 ~~to engage in business at a new location~~ pay assessments through
21 the Nationwide Mortgage Licensing System and Registry.

22 ~~SEC. 26.~~

23 *SEC. 25.* Section 22108 of the Financial Code is amended to
24 read:

25 22108. (a) The commissioner may by regulation require
26 licensees to file, at the times that he or she may specify, the
27 information that he or she may reasonably require regarding any
28 changes in the information provided in any application filed
29 pursuant to this division.

30 (b) The commissioner may, by regulation, require a licensee to
31 file information through the Nationwide Mortgage Licensing
32 System and Registry.

33 ~~SEC. 27.~~

34 *SEC. 26.* Section 22109 of the Financial Code is amended to
35 read:

36 22109. (a) Upon reasonable notice and opportunity to be heard,
37 the commissioner may deny the application for any of the following
38 reasons:

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

1 (2) The applicant or an officer, director, general partner, person
2 responsible for the applicant's lending activities in this state, or
3 person owning or controlling, directly or indirectly, 10 percent or
4 more of the outstanding interests or equity securities of the
5 applicant has, within the last 10 years, been convicted of or pleaded
6 nolo contendere to a crime, or committed an act involving
7 dishonesty, fraud, or deceit, if the crime or act is substantially
8 related to the qualifications, functions, or duties of a person
9 engaged in business in accordance with this division.

10 (3) The applicant or an officer, director, general partner, person
11 responsible for the applicant's lending activities in this state, or
12 person owning or controlling, directly or indirectly, 10 percent or
13 more of the outstanding interests or equity securities of the
14 applicant has violated any provision of this division or the rules
15 thereunder or any similar regulatory scheme of the State of
16 California or a foreign jurisdiction.

17 (4) The applicant employs a mortgage loan originator who is
18 not licensed, *or in the process of becoming licensed under Section*
19 *22181*, in this state.

20 (b) The application shall be considered withdrawn within the
21 meaning of this section if the applicant fails to respond to a written
22 notification of a deficiency in the application within 90 days of
23 the date of the notification.

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

29 ~~SEC. 28.~~

30 *SEC. 27.* Section 22112 of the Financial Code is amended to
31 read:

32 22112. (a) A licensee shall maintain a surety bond in
33 accordance with this subdivision in a minimum amount of
34 twenty-five thousand dollars (\$25,000). The bond shall be payable
35 to the commissioner and issued by an insurer authorized to do
36 business in this state. An original surety bond, including any and
37 all riders and endorsements executed subsequent to the effective
38 date of the bond, shall be filed with the commissioner within 10
39 days of execution. For licensees with multiple licensed locations,
40 only one surety bond is required. The bond shall be used for the

1 recovery of expenses, fines, and fees levied by the commissioner
2 in accordance with this division or for losses or damages incurred
3 by borrowers or consumers as the result of a licensee's
4 noncompliance with the requirements of this division.

5 (b) When an action is commenced on a licensee's bond, the
6 commissioner may require the filing of a new bond. Immediately
7 upon recovery of any action on the bond, the licensee shall file a
8 new bond. Failure to file a new bond within 10 days of the recovery
9 on a bond, or within 10 days after notification by the commissioner
10 that a new bond is required, constitutes sufficient grounds for the
11 suspension or revocation of the license.

12 (c) The commissioner shall by regulation require a higher bond
13 amount for a licensee employing one or more mortgage loan
14 originators, based upon the dollar amount of residential mortgage
15 loans originated by that licensee and any mortgage loan originators
16 employed by the licensee. Every mortgage loan originator
17 employed by the licensee shall be covered by the surety bond,
18 unless another bond or recovery fund is in place that covers the
19 activities of a mortgage loan originator employed by the licensee.

20 ~~SEC. 29:~~

21 *SEC. 28.* Section 22153 of the Financial Code is amended to
22 read:

23 22153. (a) If a licensee desires to change its place of business
24 to a street address other than that designated in its license, the
25 licensee shall give written notice to the commissioner on a form
26 provided by the commissioner at least 10 days prior to the change.
27 The commissioner shall then provide a written approval of the
28 change and the date of the approval.

29 (b) If notice is not given at least 10 days prior to the change of
30 a street address of a place of business, as required by subdivision
31 (a), or notice is not given at least 10 days prior to engaging in
32 business at a new location, as required by Section 22102, the
33 commissioner may assess a civil or administrative penalty on the
34 licensee not to exceed five hundred dollars (\$500).

35 (c) The commissioner may by regulation require a licensee to
36 provide notice of the change through the Nationwide Mortgage
37 Licensing System and Registry.

38 ~~SEC. 30.~~ Section 22165 of the Financial Code is amended to
39 read:

1 ~~22165. No advertising copy shall be used until after its use has~~
2 ~~been approved by the commissioner and the licensee is notified in~~
3 ~~writing of the approval.~~

4 ~~SEC. 31. Section 22166 of the Financial Code is amended to~~
5 ~~read:~~

6 ~~22166. The commissioner shall require licensees to maintain~~
7 ~~a file of all advertising copy for a period of 90 days from the date~~
8 ~~of its use. The file shall be available to the commissioner upon~~
9 ~~request.~~

10 ~~SEC. 32. Section 22166.5 is added to the Financial Code, to~~
11 ~~read:~~

12 ~~22166.5. (a) Each licensee, prior to the use of any proposed~~
13 ~~advertisements with regard to the business subject to this division~~
14 ~~shall submit a true copy thereof to the commissioner for approval.~~

15 ~~(b) If the commissioner, within 10 business days of receipt of~~
16 ~~the advertising copy, determines that the advertising does not~~
17 ~~comply with the requirements of this chapter or appropriate~~
18 ~~regulations, the commissioner shall notify the licensee in writing~~
19 ~~that the advertising is disapproved.~~

20 ~~SEC. 33.~~

21 ~~SEC. 29. Section 22170 of the Financial Code is amended to~~
22 ~~read:~~

23 ~~22170. (a) It is unlawful for any person to knowingly alter,~~
24 ~~destroy, mutilate, conceal, cover up, falsify, or make a false entry~~
25 ~~in any record, document, or tangible object with the intent to~~
26 ~~impede, obstruct, or influence the administration or enforcement~~
27 ~~of any provision of this division.~~

28 ~~(b) It is unlawful for any person to knowingly make an untrue~~
29 ~~statement to the commissioner or the Nationwide Mortgage~~
30 ~~Licensing System and Registry during the course of licensing,~~
31 ~~investigation, or examination, with the intent to impede, obstruct,~~
32 ~~or influence the administration or enforcement of any provision~~
33 ~~of this division.~~

34 ~~SEC. 34.~~

35 ~~SEC. 30. Section 22180 is added to the Financial Code, to read:~~

36 ~~22180. (a) Every licensee engaged in the business of making~~
37 ~~or brokering residential mortgage loans shall establish a record~~
38 ~~with and maintain a unique identifier through the Nationwide~~
39 ~~Mortgage Licensing System and Registry.~~

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

11 (c) A licensee engaged in the business of making or brokering
12 residential mortgage loans may not make or broker a loan that was
13 offered by, negotiated by, or applied for through, a mortgage loan
14 originator ~~not licensed or registered~~ *who does not maintain a*
15 *unique identifier* through the Nationwide Mortgage Licensing
16 System and Registry.

17 (d) *Subdivisions (b) and (c) shall not be applicable where a*
18 *mortgage loan originator is not subject to licensure or registration*
19 *under any provision of state law and the Secure and Fair*
20 *Enforcement for Mortgage Licensing Act of 2008 (Public Law*
21 *110-289).*

22 ~~SEC. 35.~~

23 *SEC. 31.* Section 22181 is added to the Financial Code, to read:

24 22181. (a) An individual *employed by a finance lender or*
25 *broker licensed under this division, unless specifically exempted*
26 *under subdivision (b), shall not engage in the business of a*
27 *mortgage loan originator with respect to any dwelling located in*
28 *this state without first obtaining and maintaining annually a*
29 *mortgage loan originator license under this division.* Each licensed
30 mortgage loan originator shall register with and maintain a valid
31 unique identifier issued by the Nationwide Mortgage Licensing
32 System and Registry.

33 (b) The following are exempt from the provisions of subdivision
34 (a):

35 (1) Registered mortgage loan originators, when acting for an
36 entity described in paragraph (1), (2), or (3) of subdivision (a) of
37 Section 22020.

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

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

4 (4) A licensed attorney who negotiates the terms of a residential
 5 mortgage loan on behalf of a client as an ancillary matter to the
 6 attorney’s representation of the client, unless the attorney is
 7 compensated by a lender, a mortgage broker, or other mortgage
 8 loan originator, or by any agent of the lender, mortgage broker, or
 9 other mortgage loan originator.

10 (5) *A broker or salesperson licensed by the Department of Real*
 11 *Estate to engage in the business of making or brokering residential*
 12 *mortgage loans who maintains a unique identifier through the*
 13 *Nationwide Mortgage Licensing System and Registry.*

14 ~~(5)~~

15 (6) A residential mortgage lender licensed by the Department
 16 of Corporations under the California Residential Mortgage Lending
 17 Act, and every licensed mortgage loan originator employed by
 18 that licensee who is ~~registered with~~ *licensed through* the
 19 Nationwide Mortgage Licensing System and Registry.

20 (c) A loan processor or underwriter who is an independent
 21 contractor shall not engage in the activities of a loan processor or
 22 underwriter unless the independent contractor loan processor or
 23 underwriter obtains and maintains a license under Section 22181.
 24 Each independent contractor loan processor or underwriter licensed
 25 as a mortgage loan originator shall ~~have~~ *establish* and maintain a
 26 valid unique identifier issued by the Nationwide Mortgage
 27 Licensing System and Registry.

28 (d) The commissioner may establish licensing rules or
 29 regulations and interim procedures for ~~licensing~~ *the licensing of*,
 30 and acceptance of applications *from, individuals seeking to engage*
 31 *in business as a mortgage loan originator.*

32 ~~SEC. 36.~~

33 *SEC. 32.* Section 22182 is added to the Financial Code, to read:

34 22182. (a) An applicant for a license as a mortgage loan
 35 originator shall apply through the submission of the uniform form
 36 prescribed by the Nationwide Mortgage Licensing System and
 37 Registry. The commissioner may require the submission of
 38 additional information or supporting documentation. *Section 461*
 39 *of the Business and Professions Code shall not be applicable to*
 40 *the Department of Corporations when using a national uniform*

1 *application adopted or approved for use by the Nationwide*
2 *Mortgage Licensing System and Registry in connection with the*
3 *Secure and Fair Enforcement for Mortgage Licensing Act of 2008*
4 *(Public Law 110-289).*

5 (b) At the time of filing the application, the applicant shall pay
6 ~~to the commissioner the sum of one hundred dollars (\$100)~~ as an
7 application fee *to the commissioner* for processing the application
8 and investing the applicant. The application and investigation fee
9 are not refundable if an application is denied or withdrawn.

10 (c) The commissioner may establish relationships or contracts
11 with the Nationwide Mortgage Licensing System and Registry or
12 other entities designated by the Nationwide Mortgage Licensing
13 System and Registry to collect and maintain records and process
14 transaction fees or other fees related to licensees or other persons
15 subject to the Secure and Fair Enforcement for Mortgage Licensing
16 Act of 2008 (Public Law 110-289).

17 (d) ~~For the purpose of participating in the Nationwide Mortgage~~
18 ~~Licensing System and Registry, the~~ *The* commissioner may *waive*
19 *or* modify, in whole or in part, by rule, regulation, or order, any
20 or all of the requirements of this division and to establish new
21 requirements as reasonably necessary to participate in the
22 Nationwide Mortgage Licensing System and Registry.

23 (e) ~~In connection with an application for licensing as a mortgage~~
24 ~~loan originator, an~~ *A mortgage loan originator* applicant shall, at
25 a minimum, furnish to the Nationwide Mortgage Licensing System
26 and Registry information concerning the applicant's identity,
27 including the following:

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

32 (2) Personal history and experience in a form prescribed by the
33 Nationwide Mortgage Licensing System and Registry, including
34 the submission of authorization for the Nationwide Mortgage
35 Licensing System and Registry and the commissioner to obtain
36 the following:

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

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

3 (f) The commissioner may use the Nationwide Mortgage
4 Licensing System and Registry as a channeling agent for requesting
5 information from, and distributing information to, the Department
6 of Justice or any governmental agency, and for requesting and
7 distributing information to and from any source so directed by the
8 commissioner.

9 ~~SEC. 37.~~

10 *SEC. 33.* Section 22183 is added to the Financial Code, to read:

11 22183. The commissioner ~~shall not~~ *may* issue a mortgage loan
12 originator license ~~unless if~~ the commissioner makes at a minimum
13 the following findings:

14 (a) The applicant has never had a mortgage loan originator
15 license revoked in any governmental jurisdiction, except that a
16 subsequent formal ~~rescission~~ *vacation* of the revocation shall not
17 be deemed a revocation.

18 (b) The applicant has not been convicted of, or pled guilty or
19 nolo contendere to, a felony in a domestic, foreign, or military
20 court during the seven-year period preceding the date of the
21 application for licensing and registration, or at any time preceding
22 the date of application, if the felony involved an act of fraud,
23 dishonesty, a breach of trust, or money laundering. For purposes
24 of this subdivision, any pardon of a conviction shall not be a
25 conviction.

26 (c) (1) The applicant has demonstrated financial responsibility,
27 character, and general fitness such as to command the confidence
28 of the community and to warrant a determination that the mortgage
29 loan originator will operate honestly, fairly, and efficiently within
30 the purposes of the Secure and Fair Enforcement for Mortgage
31 Licensing Act of 2008 (Public Law 110-289).

32 (2) For purposes of this subdivision, a person has shown that
33 he or she is not financially responsible when he or she has shown
34 a disregard in the management of his or her own financial
35 condition. A determination that an individual has not shown
36 financial responsibility may include, but not be limited to, the
37 following:

38 (A) Current outstanding judgments, except judgments solely as
39 a result of medical expenses.

1 (B) Current outstanding tax liens or other government liens and
2 filings.

3 (C) Foreclosures within the past three years.

4 (D) A pattern of seriously delinquent accounts within the past
5 three years.

6 (d) The applicant has completed the prelicensing education
7 requirement described in Section 22184.

8 (e) The applicant has passed a written test that meets the test
9 requirement described in Section 22185.

10 (f) The surety bond of the finance lender or broker employing
11 or intending to employ the applicant covers the activities of the
12 applicant, ~~or the applicant is otherwise covered by a bond or~~
13 ~~recovery fund.~~ *applicant and meets the requirements of Section*
14 *22112.*

15 ~~SEC. 38.~~

16 *SEC. 34.* Section 22184 is added to the Financial Code, to read:

17 22184. (a) In order to meet the prelicensing education
18 requirement referred to in subdivision (d) of Section 22183, an
19 individual shall complete at least 20 hours of education approved
20 in accordance with subdivision (b) of this section, which shall
21 include at least the following:

22 (1) ~~Three hours of education relating to relevant federal law~~
23 ~~and regulations.~~

24 (2) ~~Three hours of education relating to relevant state law and~~
25 ~~regulations.~~

26 (3)

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

29 (4)

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

32 (b) For purposes of subdivision (a), prelicensing education
33 courses shall be reviewed and approved by the Nationwide
34 Mortgage Licensing System and Registry. Review and approval
35 of a prelicensing education course shall include review and
36 approval of the course provider.

37 (c) Nothing in this section shall preclude any prelicensing
38 education course, as approved by the Nationwide Mortgage
39 Licensing System and Registry, that is provided by the employer
40 of the applicant or an entity that is affiliated with the applicant by

1 an agency contract or any subsidiary or affiliate of the employer
2 or entity.

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

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

11 ~~SEC. 39.~~

12 *SEC. 35.* Section 22185 is added to the Financial Code, to read:

13 22185. (a) In order to meet the written test requirement referred
14 to in subdivision (e) of Section 22183, an individual shall pass, ~~in~~
15 ~~accordance with the standards established under this section,~~ a
16 qualified written test developed by the Nationwide Mortgage
17 Licensing System and Registry and administered by a test provider
18 approved by the Nationwide Mortgage Licensing System and
19 Registry.

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

24 (1) Ethics.

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

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

27 (4) Federal and state law and regulation, including instruction
28 on fraud, consumer protection, the nontraditional mortgage
29 marketplace, and fair lending issues.

30 (c) Nothing in this section shall prohibit a test provider approved
31 by the Nationwide Mortgage Licensing System and Registry from
32 providing a test at the location of the employer of the applicant or
33 the location of any subsidiary or affiliate of the employer of the
34 applicant, or the location of any entity with which the applicant
35 holds an exclusive arrangement to conduct the business of a
36 mortgage loan originator.

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

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

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

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

6 ~~(4) A licensed mortgage loan originator~~ *An individual* who fails
7 to maintain a valid *mortgage loan originator* license for a period
8 of five years or longer shall retake the test, not taking into account
9 any time during which the individual is a registered mortgage loan
10 originator.

11 ~~SEC. 40.~~

12 *SEC. 36.* Section 22186 is added to the Financial Code, to read:

13 22186. ~~Each~~ *Every finance lender or broker licensee that*
14 *employs a mortgage loan originator shall submit to the Nationwide*
15 *Mortgage Licensing System and Registry reports of condition,*
16 *which shall be in the form and shall contain that information as*
17 *the Nationwide Mortgage Licensing System and Registry may*
18 *require. The commissioner may by regulation require a finance*
19 *lender or broker engaged in the business of making or brokering*
20 *residential mortgage loans or order require a mortgage loan*
21 *originator to submit the reports to the Nationwide Mortgage*
22 *Licensing System and Registry on behalf of the mortgage loan*
23 *originators employed by the lender or broker. in place of his or*
24 *her employer.*

25 ~~SEC. 41.~~

26 *SEC. 37.* Section 22187 is added to the Financial Code, to read:

27 22187. (a) The minimum standards for license renewal for
28 mortgage loan originators shall include the following:

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

31 (2) The mortgage loan originator has satisfied the annual
32 continuing education requirements described in Section 22188.

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

35 (b) The license of a mortgage loan originator failing to satisfy
36 the minimum standards for license renewal shall expire. The
37 commissioner may adopt procedures for the reinstatement of
38 expired licenses consistent with the standards established by the
39 Nationwide Mortgage Licensing System and Registry.

1 ~~SEC. 42.~~

2 *SEC. 38.* Section 22188 is added to the Financial Code, to read:

3 22188. (a) In order to meet the annual continuing education
4 requirements referred to in paragraph (2) of subdivision (a) of
5 Section 22187, a licensed mortgage loan originator shall complete
6 at least eight hours of education approved in accordance with
7 subdivision (b), which shall include at least the following:

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

9 ~~(2) One hour of state law and regulations.~~

10 ~~(3)~~

11 (2) Two hours of ethics, which shall include instruction on fraud,
12 consumer protection, and fair lending issues.

13 ~~(4)~~

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

16 (b) For purposes of subdivision (a), continuing education courses
17 shall be reviewed and approved by the Nationwide Mortgage
18 Licensing System and Registry. Review and approval of a
19 continuing education course shall include review and approval of
20 the course provider.

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

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

30 (e) Except as provided in Section 22187 and subdivision (i), a
31 mortgage loan originator may only receive credit for a continuing
32 education course in the year in which the course is taken, and a
33 mortgage loan originator may not take the same approved course
34 in the same or successive years to meet the annual requirements
35 for continuing education.

36 (f) A licensed mortgage loan originator who is an approved
37 instructor of an approved continuing education course may receive
38 credit for the licensed mortgage loan originator’s own annual
39 continuing education requirement at the rate of two hours credit
40 for every one hour taught.

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

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

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

14 ~~SEC. 43.~~

15 *SEC. 39.* Section 22189 is added to the Financial Code, to read:
16 22189. The commissioner shall participate in the Nationwide
17 Mortgage Licensing System and Registry, and may establish, by
18 regulation or order, requirements as necessary for participation,
19 including, but not limited to, the following:

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

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

22 (2) Civil or administrative records.

23 (3) Credit history.

24 (4) Any other information as deemed necessary by the
25 Nationwide Mortgage Licensing System and Registry *or the*
26 *commissioner.*

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

29 (c) The setting or resetting as necessary of renewal or reporting
30 dates.

31 ~~(d) Requirements for amending or surrendering a license or any~~
32 ~~other activities as the commissioner deems necessary for~~
33 ~~participation in the Nationwide Mortgage Licensing System and~~
34 ~~Registry.~~

35 *(d) Amending or surrendering a license.*

36 *(e) Any other activities the commissioner deems necessary for*
37 *participation in the Nationwide Mortgage Licensing System and*
38 *Registry.*

39 ~~SEC. 44.~~

40 *SEC. 40.* Section 22190 is added to the Financial Code, to read:

1 22190. The commissioner shall regularly report violations of
 2 this division by persons engaged in the business of making or
 3 brokering residential mortgage loans, or by mortgage loan
 4 originators, as well as enforcement actions and other relevant
 5 information, to the Nationwide Mortgage Licensing System and
 6 Registry.

7 ~~SEC. 45.~~

8 *SEC. 41.* Section 22191 is added to the Financial Code, to read:

9 22191. The commissioner shall establish a process whereby
 10 mortgage loan originators may challenge information entered into
 11 the Nationwide Mortgage Licensing System and Registry by the
 12 commissioner.

13 ~~SEC. 46.~~

14 *SEC. 42.* Section 22192 is added to the Financial Code, to read:

15 22192. (a) The commissioner may do any of the following:

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

19 (2) Deny, suspend, revoke, condition, or decline to renew a
 20 mortgage loan originator license if an applicant or licensee fails
 21 at any time to meet the requirements of Section 22183 or 22187,
 22 or withholds information or makes a material misstatement in an
 23 application for a license or renewal of a license.

24 (3) Order restitution against a mortgage loan originator or any
 25 finance lender or broker licensee employing a mortgage loan
 26 originator for violations of this division.

27 (4) Impose fines on a mortgage loan originator or any finance
 28 lender or broker licensee employing a mortgage loan originator
 29 pursuant to subdivisions (b), (c), and (d).

30 (5) Issue orders or directives *to mortgage loan originators* under
 31 this division as follows:

32 (A) Order or direct a mortgage loan originator or any finance
 33 lender or broker licensee employing a mortgage loan originator to
 34 ~~cease and desist~~ *desist and refrain* from conducting business,
 35 including immediate temporary orders to ~~cease and desist~~ *desist*
 36 *and refrain*.

37 (B) Order or direct a mortgage loan originator or any finance
 38 lender or broker licensee employing a mortgage loan originator to
 39 cease any harmful activities or violations of this division, including
 40 immediate temporary orders to ~~cease and desist~~ *desist and refrain*.

1 (C) Enter immediate temporary orders to cease business under
2 a license issued pursuant to the authority granted under Section
3 22181 if the commissioner determines that the license was
4 erroneously granted or the licensee *mortgage loan originator* is
5 currently in violation of this division.

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

8 (b) The commissioner may impose a civil penalty on a mortgage
9 loan originator or any finance lender or broker licensee employing
10 a mortgage loan originator, if the commissioner finds, on the record
11 after notice and opportunity for hearing, that the mortgage loan
12 originator or any finance lender or broker licensee employing a
13 mortgage loan originator has violated or failed to comply with any
14 requirement of this division or any regulation prescribed by the
15 commissioner under this division or order issued under authority
16 of this division.

17 (c) The maximum amount of penalty for each act or omission
18 described in subdivision (b) shall be twenty-five thousand dollars
19 (\$25,000).

20 (d) Each violation or failure to comply with any directive or
21 order of the commissioner is a separate and distinct violation or
22 failure.

23 ~~SEC. 47.~~

24 *SEC. 43.* Section 22193 is added to the Financial Code, to read:

25 22193. (a) Except as otherwise provided in Section 1512 of
26 the Secure and Fair Enforcement for Mortgage Licensing Act of
27 2008 (Public Law 110-289), any requirement under federal or state
28 law regarding the privacy or confidentiality of any information or
29 material provided to the Nationwide Mortgage Licensing System
30 and Registry, and any privilege arising under federal or state law,
31 including the rules of any federal or state court with respect to the
32 information or material, shall continue to apply to the information
33 or material after the information or material has been disclosed to
34 the Nationwide Mortgage Licensing System and Registry. The
35 information and material may be shared with all state and federal
36 regulatory officials with mortgage industry oversight authority
37 without the loss of privilege or the loss of confidentiality
38 protections provided by federal or state law.

39 (b) ~~To promote more effective regulation and reduce regulatory~~
40 ~~burden through supervisory information sharing, the~~ *The*

1 commissioner may enter into agreements or sharing arrangements
2 with other governmental agencies, the Conference of State Bank
3 Supervisors, the American Association of Residential Mortgage
4 Regulators, or other associations representing governmental
5 agencies as established by rule, regulation, or order of the
6 commissioner.

7 (c) Information or material that is subject to a privilege or
8 confidentiality under subdivision (a) shall not be subject to the
9 following:

10 (1) Disclosure under any *federal or* state law governing the
11 disclosure to the public of information held by an officer *of the*
12 *federal government* or an agency of the state.

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

19 (d) Any state law relating to the disclosure of confidential
20 supervisory information or any information or material ~~provided~~
21 ~~to the Nationwide Mortgage Licensing System and Registry that~~
22 ~~described in subdivision (a) that~~ is inconsistent with subdivision
23 (a) shall be superseded by the requirements of this section.

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

29 ~~SEC. 48.~~

30 *SEC. 44.* Section 22194 is added to the Financial Code, to read:

31 22194. The unique identifier of any person originating a
32 residential mortgage loan shall be clearly shown on all residential
33 mortgage loan application forms, solicitations or advertisements,
34 including business cards or Internet Web sites, and any other
35 documents as established by rule, regulation, or order of the
36 commissioner.

37 ~~SEC. 49.~~

38 *SEC. 45.* Section 50002 of the Financial Code is amended to
39 read:

1 50002. (a) No person shall engage in the business of making
2 residential mortgage loans or servicing residential mortgage loans,
3 in this state, without first obtaining a license from the commissioner
4 in accordance with the requirements of Chapter 2 (commencing
5 with Section 50120) or Chapter 3 (commencing with Section
6 50130), and any rules promulgated by the commissioner under
7 this law, unless a person or transaction is excepted from a definition
8 or exempt from licensure by a provision of this law or a rule of
9 the commissioner.

10 (b) An employee of a licensee or of a person exempt from
11 licensure is not required to be licensed when acting within the
12 scope of his or her employment and shall be exempt from any
13 other law from which his or her employer is exempt, ~~unless he or~~
14 ~~she~~ *except that an individual who* meets the definition of a
15 mortgage loan originator under subdivision (u) of Section 50003
16 *shall be subject to this division unless otherwise exempt.*

17 ~~SEC. 50.~~

18 *SEC. 46.* Section 50003 of the Financial Code is amended to
19 read:

20 50003. (a) “Annual audit” means a certified audit of the
21 licensee’s books, records, and systems of internal control performed
22 by an independent certified public accountant in accordance with
23 generally accepted accounting principles and generally accepted
24 auditing standards.

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

26 (c) “Buy” includes exchange, offer to buy, or solicitation to
27 buy.

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

29 (e) “Control” means the possession, directly or indirectly, of
30 the power to direct, or cause the direction of, the management and
31 policies of a licensee under this division, whether through voting
32 or through the ownership of voting power of an entity that
33 possesses voting power of the licensee, or otherwise. Control is
34 presumed to exist if a person, directly or indirectly, owns, controls,
35 or holds 10 percent or more of the voting power of a licensee or
36 of an entity that owns, controls, or holds, with power to vote, 10
37 percent or more of the voting power of a licensee. No person shall
38 be deemed to control a licensee solely by reason of his or her status
39 as an officer or director of the licensee.

1 (f) “Depository institution” has the same meaning as in Section
2 3 of the Federal Deposit Insurance Act, and includes any credit
3 union.

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

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

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

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

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

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

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

33 (6) An agency, or other instrumentality of the federal
34 government, or state or municipal government.

35 (7) An employee or employer pension plan making residential
36 mortgage loans only to its participants, or a person making those
37 loans only to its employees or the employees of a holding company,
38 owner who controls that person, affiliate, or subsidiary of that
39 person.

1 (8) A person acting in a fiduciary capacity conferred by the
2 authority of a court.

3 (9) A real estate broker licensed ~~as a mortgage loan originator~~
4 ~~under California law and registered with~~ *under California law and*
5 *who maintains a unique identifier through* the Nationwide
6 Mortgage Licensing System *and Registry*, when making, arranging,
7 selling, or servicing a residential loan.

8 (10) A California finance lender licensed under Division 9
9 (commencing with Section 22000), when acting under the authority
10 of that license.

11 (11) A trustee under a deed of trust pursuant to the Civil Code,
12 when collecting delinquent loan payments, interest, or other loan
13 amounts, or performing other acts in a judicial or nonjudicial
14 foreclosure proceeding.

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

20 (j) “Immediate family member” means a spouse, child, sibling,
21 parent, grandparent, or grandchild. This includes stepparents,
22 stepchildren, stepsiblings, and adoptive relationships.

23 (k) “Individual” means a natural person.

24 (l) “In this state” ~~means~~ *includes* any activity of a person relating
25 to making or servicing a residential mortgage loan that originates
26 from this state and is directed to persons outside this state, or that
27 originates from outside this state and is directed to persons inside
28 this state, or that originates inside this state and is directed to
29 persons inside this state, or that leads to the formation of a contract
30 and the offer or acceptance thereof is directed to a person in this
31 state (whether from inside or outside this state and whether the
32 offer was made inside or outside the state).

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

34 (1) The United States or any state, district, territory, or
35 commonwealth thereof, or any city, county, city and county, public
36 district, public authority, public corporation, public entity, or
37 political subdivision of a state, district, territory, or commonwealth
38 of the United States, or any agency or other instrumentality of any
39 one or more of the foregoing, including, by way of example, the

1 Federal National Mortgage Association and the Federal Home
2 Loan Mortgage Corporation.

3 (2) Any bank, trust company, savings bank or savings and loan
4 association, credit union, industrial bank or industrial loan
5 company, personal property broker, consumer finance lender,
6 commercial finance lender, or insurance company, or subsidiary
7 or affiliate of one of the preceding entities, doing business under
8 the authority of or in accordance with a license, certificate, or
9 charter issued by the United States or any state, district, territory,
10 or commonwealth of the United States.

11 (3) Trustees of pension, profit-sharing, or welfare funds, if the
12 pension, profit-sharing, or welfare fund has a net worth of not less
13 than fifteen million dollars (\$15,000,000), except pension,
14 profit-sharing, or welfare funds of a licensee or its affiliate,
15 self-employed individual retirement plans, or individual retirement
16 accounts.

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

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

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

27 (5) An investment company registered under the Investment
28 Company Act of 1940; or a wholly owned and controlled subsidiary
29 of that company, provided that the purchaser makes either of the
30 representations provided in paragraph (4).

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

33 (7) Any person who is licensed as a securities broker or
34 securities dealer under any law of this state, or of the United States,
35 or any employee, officer or agent of that person, if that person is
36 acting within the scope of authority granted by that license or an
37 affiliate or subsidiary controlled by that broker or dealer, in
38 connection with a transaction involving the offer, sale, purchase,
39 or exchange of one or more promissory notes secured directly or
40 indirectly by liens on real property or a security representing an

1 ownership interest in a pool of promissory notes secured directly
2 or indirectly by liens on real property, and the offer and sale of
3 those securities is qualified under the California Corporate
4 Securities Law of 1968 or registered under federal securities laws,
5 or exempt from qualification or registration.

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

9 (9) A business development company as defined in Section
10 2(a)(48) of the Investment Company Act of 1940 or a Small
11 Business Investment Company licensed by the United States Small
12 Business Administration under Section 301(c) or (d) of the Small
13 Business Investment Act of 1958.

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

16 (11) A trust or other business entity established by an
17 institutional investor for the purpose of issuing or facilitating the
18 issuance of securities representing undivided interests in, or rights
19 to receive payments from or to receive payments primarily from,
20 a pool of financial assets held by the trust or business entity,
21 provided that all of the following apply:

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

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

24 (i) Interest-bearing obligations.

25 (ii) Other contractual obligations representing the right to receive
26 payments from the assets.

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

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

30 (i) Rated as “investment grade” by Standard and Poor’s
31 Corporation or Moody’s Investors Service, Inc. “Investment grade”
32 means that the securities will be rated by Standard and Poor’s
33 Corporation as AAA, AA, A, or BBB or by Moody’s Investors
34 Service, Inc. as Aaa, Aa, A, or Baa, including any of those ratings
35 with “+” or “—” designation or other variations that occur within
36 those ratings.

37 (ii) Sold to an institutional investor.

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

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

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

10 (2) Any bank, trust company, savings bank or savings and loan
11 association, credit union, industrial loan company, or insurance
12 company, or service or investment company that is wholly owned
13 and controlled by one of the preceding entities, doing business
14 under the authority of and in accordance with a license, certificate,
15 or charter issued by the United States or any state, district, territory,
16 or commonwealth of the United States.

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

20 (4) A person licensed to make residential mortgage loans under
21 this law.

22 (o) “Law” means the California Residential Mortgage Lending
23 Act.

24 (p) “Lender” means a person that (1) is an approved lender for
25 the Federal Housing Administration, Veterans Administration,
26 Farmers Home Administration, Government National Mortgage
27 Association, Federal National Mortgage Association, or Federal
28 Home Loan Mortgage Corporation, (2) directly makes residential
29 mortgage loans, and (3) makes the credit decision in the loan
30 transactions.

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

34 (r) “Loan processor or underwriter” means either of the
35 following:

36 (1) An individual who performs clerical or support duties as an
37 employee at the direction of and subject to the supervision and
38 instruction of a person licensed, or exempt from licensing under
39 Sections 50110 to 50110.6, inclusive. For purposes of this

1 paragraph, “clerical or support duties” may include the following,
2 subsequent to the receipt of an application:

3 (A) The receipt, collection, distribution, and analysis of
4 information common for the processing or underwriting of a
5 residential mortgage loan.

6 (B) Communicating with a consumer to obtain the information
7 necessary for the processing or underwriting of a loan, to the extent
8 that the communication does not include offering or negotiating
9 loan rates or terms, or counseling consumers about residential
10 mortgage loan rates or terms.

11 (2) An individual engaging solely in loan processor or
12 underwriter activities; shall not represent to the public, through
13 advertising or other means of communicating or providing
14 information including the use of business cards, stationery,
15 brochures, signs, rate lists, or other promotional items, that the
16 individual can or will perform any of the activities of a mortgage
17 loan originator.

18 (s) “Makes or making residential mortgage loans” or “mortgage
19 lending” means processing, underwriting, or as a lender using or
20 advancing one’s own funds, or making a commitment to advance
21 one’s own funds, to a loan applicant for a residential mortgage
22 loan.

23 ~~(t) “Makes or making residential mortgage loans” or “mortgage~~
24 ~~lending” means processing, underwriting, or as a lender using or~~
25 ~~advancing one’s own funds, or making a commitment to advance~~
26 ~~one’s own funds, to a loan applicant for a residential mortgage~~
27 ~~loan.~~

28 ~~(u)~~

29 (t) “Mortgage loan,” “residential mortgage loan,” or “home
30 mortgage loan” means a federally ~~regulated~~ *related* mortgage loan
31 as defined in Section 3500.2 of Title 24 of the Code of Federal
32 Regulations, or a loan made to finance construction of a one to
33 four family dwelling. ~~The terms also mean any loan primarily for~~
34 ~~personal, family, or household use that is secured by a mortgage,~~
35 ~~deed of trust, or other equivalent consensual security interest on~~
36 ~~a dwelling, as defined in Section 103(v) of the Truth in Lending~~
37 ~~Act, or residential real estate upon which is constructed or intended~~
38 ~~to be constructed a dwelling.~~

39 (v)

1 (u) “Mortgage loan originator” means an individual who for
2 compensation or gain, or in the expectation of compensation or
3 gain, takes a residential mortgage loan application or offers or
4 negotiates terms of a residential mortgage loan. A mortgage loan
5 originator does not include any of the following:

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

8 (2) A person or entity that only performs real estate brokerage
9 activities and is licensed or registered in accordance with California
10 law, unless the person or entity is compensated by a lender, a
11 mortgage broker, or other mortgage loan originator, or by any
12 agent of the lender, mortgage broker, or other mortgage loan
13 originator.

14 (3) A person or entity solely involved in extensions of credit
15 relating to timeshare plans, as that term is defined in Section
16 101(53D) of Title 11 of the United States Code.

17 ~~(w)~~

18 (v) “Mortgage servicer” or “residential mortgage loan servicer”
19 means a person that (1) is an approved servicer for the Federal
20 Housing Administration, Veterans Administration, Farmers Home
21 Administration, Government National Mortgage Association,
22 Federal National Mortgage Association, or Federal Home Loan
23 Mortgage Corporation, and (2) directly services or offers to service
24 mortgage loans.

25 ~~(x)~~

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

31 ~~(y)~~

32 (x) “Net worth” has the meaning set forth in Section 50201.

33 ~~(z)~~

34 (y) “Nontraditional mortgage product” means any mortgage
35 product other than a 30-year fixed rate mortgage.

36 ~~(aa)~~

37 (z) “Own funds” means (1) cash, corporate capital, or warehouse
38 credit lines at commercial banks, savings banks, savings and loan
39 associations, industrial loan companies, or other sources that are
40 liability items on a lender’s financial statements, whether secured

1 or unsecured, or (2) a lender’s affiliate’s cash, corporate capital,
2 or warehouse credit lines at commercial banks or other sources
3 that are liability items on the affiliate’s financial statements,
4 whether secured or unsecured. “Own funds” does not include funds
5 provided by a third party to fund a loan on condition that the third
6 party will subsequently purchase or accept an assignment of that
7 loan.

8 (ab)

9 (aa) “Person” means a natural person, a sole proprietorship, a
10 corporation, a partnership, a limited liability company, an
11 association, a trust, a joint venture, an unincorporated organization,
12 a joint stock company, a government or a political subdivision of
13 a government, and any other entity.

14 (ae)

15 (ab) “Registered mortgage loan originator” means an individual
16 who meets both of the following:

17 (1) The individual meets the definition of a mortgage loan
18 originator and is an employee of (A) a depository institution, (B)
19 a subsidiary that is owned and controlled by a depository institution
20 and regulated by a federal banking agency, or (C) an institution
21 regulated by the Farm Credit Administration.

22 (2) The individual is registered with, and maintains a unique
23 identifier through, the Nationwide Mortgage Licensing System
24 and Registry.

25 (ad)

26 (ac) “Residential real property” or “residential real estate” means
27 real property located in this state, ~~upon which is constructed or~~
28 ~~intended to be constructed a dwelling.~~ *that is improved by a*
29 *one-to-four family dwelling.*

30 (ae)

31 (ad) “Service” or “servicing” means receiving more than three
32 installment payments of principal, interest, or other amounts placed
33 in escrow, pursuant to the terms of a mortgage loan and performing
34 services by a licensee relating to that receipt or the enforcement
35 of its receipt, on behalf of the holder of the note evidencing that
36 loan.

37 (af)

38 (ae) “Sell” includes exchange, offer to sell, or solicitation to
39 sell.

40 (ag)

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

4 ~~SEC. 51.~~

5 *SEC. 47.* Section 50110 is added to the Financial Code, to read:

6 50110. (a) An individual, *employed by a residential mortgage*
7 *lender or servicer licensed under this division* unless specifically
8 exempted under subdivision (b), shall not engage in the business
9 of a mortgage loan originator with respect to any dwelling located
10 in this state without first obtaining and maintaining annually a
11 mortgage loan originator license. Each licensed mortgage loan
12 originator ~~must~~ *shall* register with and maintain a valid unique
13 identifier issued by the Nationwide Mortgage Licensing System
14 and Registry.

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

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

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

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

25 (4) A licensed attorney who negotiates the terms of a residential
26 mortgage loan on behalf of a client as an ancillary matter to the
27 attorney’s representation of the client, unless the attorney is
28 compensated by a lender, a mortgage broker, or other mortgage
29 loan originator or by any agent of the lender, mortgage broker, or
30 other mortgage loan originator.

31 (5) A finance lender or broker licensed by the Department of
32 Corporations under the California Finance Lenders Law, and every
33 licensed mortgage loan originator employed by the finance lender
34 or broker ~~who is registered with that maintains a unique identifier~~
35 *through the Nationwide Mortgage Licensing System and Registry.*

36 (6) *A broker or salesperson licensed by the Department of Real*
37 *Estate to engage in the business of making or brokering residential*
38 *mortgage loans who maintains a unique identifier through the*
39 *Nationwide Mortgage Licensing System and Registry.*

1 (c) A loan processor or underwriter who is an independent
2 contractor may not engage in the activities of a loan processor or
3 underwriter unless the independent contractor loan processor or
4 underwriter obtains and maintains a license under subdivision (a).
5 Each independent contractor loan processor or underwriter licensed
6 as a mortgage loan originator shall have and maintain a valid
7 unique identifier issued by the Nationwide Mortgage Licensing
8 System and Registry.

9 (d) The commissioner may establish licensing rules or
10 regulations and interim procedures for ~~licensing~~ *the licensing of,*
11 and acceptance of applications *from, individuals seeking to engage*
12 *in business as a mortgage loan originator.*

13 ~~SEC. 52.~~

14 *SEC. 48.* Section 50110.1 is added to the Financial Code, to
15 read:

16 50110.1. (a) An applicant for a license as a mortgage loan
17 originator shall apply through the submission of the uniform form
18 prescribed by the Nationwide Mortgage Licensing System and
19 Registry. The commissioner may require the submission of
20 additional information or supporting documentation to the
21 department. *Section 461 of the Business and Professions Code*
22 *shall not be applicable to the Department of Corporations when*
23 *using a national uniform application adopted or approved for use*
24 *by the Nationwide Mortgage Licensing System and Registry in*
25 *connection with the Secure and Fair Enforcement for Mortgage*
26 *Licensing Act of 2008 (Public Law 110-289).*

27 (b) At the time of filing the application, the applicant shall pay
28 ~~to the commissioner a sum to be determined by the commissioner~~
29 ~~as an application fee~~ *to the commissioner* for processing the
30 application and investigating the applicant. The application and
31 investigating fee are not refundable if an application is denied or
32 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 mortgage loan originators,
38 licensees, or other persons subject to the Secure and Fair
39 Enforcement for Mortgage Licensing Act of 2008 (Public Law
40 110-289).

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

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

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

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

22 (A) An independent credit report obtained from a consumer
 23 reporting agency described in Section 603(p) of the federal Fair
 24 Credit Reporting Act.

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

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

33 ~~SEC. 53.~~

34 *SEC. 49.* Section 50110.2 is added to the Financial Code, to
 35 read:

36 50110.2. The commissioner ~~shall not~~ *may* issue a mortgage
 37 loan originator license ~~unless if~~ the commissioner makes, at a
 38 minimum, the following findings:

39 (a) The applicant has never had a mortgage loan originator
 40 license revoked in any governmental jurisdiction, except that a

1 subsequent formal ~~reversion~~ *vacation* of the revocation shall not
2 be deemed a revocation.

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

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

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

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

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

26 (C) Foreclosures within the past three years.

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

29 (d) The applicant has completed the prelicensing education
30 requirement described in Section 50110.3.

31 (e) The applicant has passed a written test that meets the test
32 requirement described in Section 50110.4.

33 (f) The surety bond of the residential mortgage lender or servicer
34 employing or intending to employ the applicant covers the activities
35 ~~of the applicant, or the applicant is otherwise covered by a bond~~
36 ~~or recovery fund.~~ *of the applicant and meets the requirements of*
37 *Section 50205.*

38 ~~SEC. 54.~~

39 *SEC. 50.* Section 50110.3 is added to the Financial Code, to
40 read:

1 50110.3. (a) In order to meet the prelicensing education
2 requirements referred to in subdivision (d) of Section 50110.2, an
3 individual shall complete at least 20 hours of education approved
4 in accordance with subdivision (b), which shall include at least
5 the following:

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

7 ~~(2) Two hours of state law and regulations.~~

8 ~~(3)~~

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

11 ~~(4)~~

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

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

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

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

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

33 ~~SEC. 55.~~

34 *SEC. 51.* Section 50110.4 is added to the Financial Code, to
35 read:

36 50110.4. (a) In order to meet the written test requirement
37 referred to in subdivision (e) of Section 50110.2, an individual
38 shall pass, ~~in accordance with the standards established under this~~
39 ~~section,~~ a qualified written test developed by the Nationwide
40 Mortgage Licensing System and Registry and administered by a

1 test provider approved by the Nationwide Mortgage Licensing
2 System and Registry.

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

7 (1) Ethics.

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

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

10 (4) Federal and state law and regulation, including instruction
11 on fraud, consumer protection, the nontraditional mortgage
12 marketplace, and fair lending issues.

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

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

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

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

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

29 (4) ~~A licensed mortgage loan originator~~ *An individual* who fails
30 to maintain a valid *mortgage loan originator* license for a period
31 of five years or longer shall retake the test, not taking into account
32 any time during which the individual is a registered mortgage loan
33 originator.

34 ~~SEC. 56.~~

35 *SEC. 52.* Section 50110.5 is added to the Financial Code, to
36 read:

37 50110.5. ~~Each~~ *Every residential mortgage lender or servicer*
38 *licensee that employs a mortgage loan originator* shall submit to
39 the Nationwide Mortgage Licensing System and Registry reports
40 of condition, which shall be in the form and shall contain that

1 information as the Nationwide Mortgage Licensing System and
 2 Registry may require. The commissioner may by regulation ~~require~~
 3 ~~a residential mortgage lender or servicer or order require a~~
 4 ~~mortgage loan originator~~ to submit the reports to the Nationwide
 5 Mortgage Licensing System and Registry ~~on behalf of the mortgage~~
 6 ~~loan originators employed by the residential mortgage lender or~~
 7 ~~servicer. in place of his or her employer.~~

8 ~~SEC. 57.~~

9 *SEC. 53.* Section 50110.6 is added to the Financial Code, to
 10 read:

11 50110.6. (a) The minimum standards for license renewal for
 12 mortgage loan originators shall include the following:

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

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

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

19 (b) The license of a mortgage loan originator failing to satisfy
 20 the minimum standards for license renewal shall expire. The
 21 commissioner may adopt procedures for the reinstatement of
 22 expired licenses consistent with the standards established by the
 23 Nationwide Mortgage Licensing System and Registry.

24 ~~SEC. 58.~~

25 *SEC. 54.* Section 50110.7 is added to the Financial Code, to
 26 read:

27 50110.7. (a) In order to meet the annual continuing education
 28 requirements referred to in paragraph (2) of subdivision (a) of
 29 Section 50110.6, a licensed mortgage loan originator shall complete
 30 at least eight hours of education approved in accordance with
 31 subdivision (b), which shall include at least the following:

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

33 (2) One hour of state law and regulations.

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

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

38 (b) For purposes of subdivision (a), continuing education courses
 39 shall be reviewed and approved by the Nationwide Mortgage
 40 Licensing System and Registry. Review and approval of a

1 continuing education course shall include review and approval of
2 the course provider.

3 (c) Nothing in this section shall preclude any education course,
4 as approved by the Nationwide Mortgage Licensing System and
5 Registry, that is provided by the employer of the mortgage loan
6 originator or an entity which is affiliated with the mortgage loan
7 originator by an agency contract, or any subsidiary or affiliate of
8 the employer or entity.

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

12 (e) Except as provided in Section 50110.6 and subdivision (i),
13 a mortgage loan originator may only receive credit for a continuing
14 education course in the year in which the course is taken, and a
15 mortgage loan originator may not take the same approved course
16 in the same or successive years to meet the annual requirements
17 for continuing education.

18 (f) A licensed mortgage loan originator who is an approved
19 instructor of an approved continuing education course may receive
20 credit for the licensed mortgage loan originator's own annual
21 continuing education requirement at the rate of two hours credit
22 for every one hour taught.

23 (g) The successful completion of the education requirements
24 approved by the Nationwide Mortgage Licensing System and
25 Registry under paragraphs (1), (2), and (3) of subdivision (a) in
26 another state shall be accepted as credit towards completion of
27 continuing education requirements in this state.

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

32 (i) An individual meeting the requirements of paragraphs (1)
33 and (3) of subdivision (a) of Section 50110.6 may correct any
34 deficiency in continuing education as established by rule or
35 regulation of the commissioner.

36 ~~SEC. 59.~~

37 *SEC. 55.* Section 50110.8 is added to the Financial Code, to
38 read:

39 50110.8. ~~Every mortgage loan originator shall be licensed~~
40 ~~through the Nationwide Mortgage Licensing System and Registry.~~

1 The commissioner shall participate in the Nationwide Mortgage
2 Licensing System and Registry, and may establish, by regulation
3 or order, requirements as necessary for participation, including,
4 but not limited to, the following:

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

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

7 (2) Civil or administrative records.

8 (3) Credit history.

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

11 (b) The payment of fees to apply for or renew licenses through
12 the Nationwide Mortgage Licensing System and Registry *or the*
13 *commissioner*.

14 (c) The setting or resetting as necessary of renewal or reporting
15 dates.

16 ~~(d) Requirements for amending or surrendering a license or any~~
17 ~~other activities as the commissioner deems necessary for~~
18 ~~participation in the Nationwide Mortgage Licensing System and~~
19 ~~Registry.~~

20 *(d) Any other activities as the commissioner deems necessary*
21 *for participation in the Nationwide Mortgage Licensing System*
22 *and Registry.*

23 ~~SEC. 60.~~

24 *SEC. 56.* Section 50110.9 is added to the Financial Code, to
25 read:

26 50110.9. The commissioner shall report regularly violations
27 of this division by persons engaged in the business of making,
28 brokering, or servicing residential mortgage loans, or by mortgage
29 loan originators, as well as enforcement actions and other relevant
30 information, to the Nationwide Mortgage Licensing System and
31 Registry.

32 ~~SEC. 61.~~

33 *SEC. 57.* Section 50110.10 is added to the Financial Code, to
34 read:

35 50110.10. The commissioner shall establish a process whereby
36 mortgage loan originators may challenge information entered into
37 the Nationwide Mortgage Licensing System and Registry by the
38 commissioner.

1 ~~SEC. 62.~~

2 *SEC. 58.* Section 50110.11 is added to the Financial Code, to
3 read:

4 50110.11. (a) The commissioner may do any of the following:

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

8 (2) Deny, suspend, revoke, condition, or decline to renew a
9 mortgage loan originator license if an applicant or mortgage loan
10 originator fails at any time to meet the requirements of Section
11 50110.2 or 50110.6, or withholds information or makes a material
12 misstatement in an application for a license or renewal of a license.

13 (3) Order restitution against ~~a person~~ *mortgage loan originator*
14 subject to this division for a violation of this division.

15 (4) Impose fines on ~~any person~~ *a mortgage loan originator*
16 subject to this division pursuant to subdivisions (b), (c), and (d).

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

18 (A) Order or direct ~~persons~~ *mortgage loan originators* subject
19 to this division to ~~cease and desist~~ *desist and refrain* from
20 conducting business, including immediate temporary orders to
21 ~~cease and desist~~ *desist and refrain*.

22 (B) Order or direct ~~persons~~ *mortgage loan originators* subject
23 to this division to cease any harmful activities or violations of this
24 division, including immediate temporary orders to ~~cease and desist~~
25 *desist and refrain*.

26 (C) Enter immediate temporary orders to cease business under
27 a license issued pursuant to the authority granted under Section
28 50110 if the commissioner determines that the license was
29 erroneously granted or the person is currently in violation of this
30 division.

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

33 (b) The commissioner may impose a civil penalty on a mortgage
34 loan originator ~~or person subject to this division~~, if the
35 commissioner finds, on the record after notice and opportunity for
36 hearing, that the mortgage loan originator ~~or person subject to this~~
37 ~~division~~ has violated or failed to comply with any requirement of
38 this division or any regulation prescribed by the commissioner
39 under this division or order issued under authority of this division.

1 (c) The maximum amount of penalty for each act or omission
 2 described in subdivision (b) shall be twenty-five thousand dollars
 3 (\$25,000).

4 (d) Each violation or failure to comply with any directive or
 5 order of the commissioner is a separate and distinct violation or
 6 failure.

7 ~~SEC. 63.~~

8 *SEC. 59.* Section 50110.12 is added to the Financial Code, to
 9 read:

10 50110.12. (a) Except as otherwise provided in Section 1512
 11 of Public Law 110-289 (the Secure and Fair Enforcement for
 12 Mortgage Licensing Act of 2008), any requirement under federal
 13 or state law regarding the privacy or confidentiality of any
 14 information or material provided to the Nationwide Mortgage
 15 Licensing System and Registry, and any privilege arising under
 16 federal or state law, including the rules of any federal or state court
 17 with respect to the information or material, shall continue to apply
 18 to the information or material after the information or material has
 19 been disclosed to the Nationwide Mortgage Licensing System and
 20 Registry. The information and material may be shared with all
 21 state and federal regulatory officials with mortgage industry
 22 oversight authority without the loss of privilege or the loss of
 23 confidentiality protections provided by federal or state law.

24 (b) ~~To promote more effective regulation and reduce regulatory~~
 25 ~~burden through supervisory information sharing, the~~ *The*
 26 commissioner may enter into agreements or sharing arrangements
 27 with other governmental agencies, the Conference of State Bank
 28 Supervisors, the American Association of Residential Mortgage
 29 Regulators, or other associations representing governmental
 30 agencies as established by rule, regulation, or order of the
 31 commissioner.

32 (c) Information or material that is subject to a privilege or
 33 confidentiality under subdivision (a) shall not be subject to the
 34 following:

35 (1) Disclosure under any *federal or* state law governing the
 36 disclosure to the public of information held by an officer or an
 37 agency of the *federal government or this* state.

38 (2) Subpoena or discovery, or admission into evidence, in any
 39 private civil action or administrative process, unless with respect
 40 to any privilege held by the Nationwide Mortgage Licensing

1 System and Registry with respect to that information or material,
2 the person to whom the information or material pertains waives,
3 in whole or in part, in the discretion of the person, that privilege.

4 (d) Any state law relating to the disclosure of confidential
5 supervisory information or any information or material ~~provided~~
6 ~~to the Nationwide Mortgage Licensing System and Registry that~~
7 *described in subdivision (a) that* is inconsistent with subdivision
8 (a) shall be superseded by the requirements of this section.

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

14 ~~SEC. 64.~~

15 *SEC. 60.* Section 50110.16 is added to the Financial Code, to
16 read:

17 50110.16. The unique identifier of any person originating a
18 residential mortgage loan shall be clearly shown on all residential
19 mortgage loan application forms, solicitations or advertisements,
20 including business cards or Internet Web sites, and any other
21 documents as established by rule, regulation, or order of the
22 commissioner.

23 ~~SEC. 65.~~

24 *SEC. 61.* Section 50121 of the Financial Code is amended to
25 read:

26 50121. The commissioner shall issue a residential mortgage
27 ~~loan lender~~ license upon the satisfaction of all of the following:

28 (a) The filing with the commissioner of a complete and verified
29 application for licensure.

30 (b) The filing as an exhibit to the application of a listing of
31 material judgments filed against, and bankruptcy petitions filed
32 by, the applicant for the preceding five years, and the disposition
33 thereof.

34 (c) The payment of a nonrefundable investigation fee of one
35 hundred dollars (\$100), plus the cost of fingerprint processing and
36 clearance, and an application filing fee of nine hundred dollars
37 (\$900).

38 (d) An investigation of the statements required by Section 50124
39 based upon which the commissioner is able to issue findings that
40 the financial responsibility, criminal records (verified by

1 fingerprint, at the discretion of the commissioner), experience,
2 character, and general fitness of the applicant and of the partners
3 or members thereof, if the applicant is a partnership or association,
4 and of the principal officers and directors thereof, if the license
5 applicant is a corporation, support a finding that the business will
6 be operated honestly, fairly, and in accordance with the
7 requirements of this division.

8 ~~SEC. 66.~~

9 *SEC. 62.* Section 50122 of the Financial Code is amended to
10 read:

11 50122. (a) The application for a residential mortgage lender
12 license shall be in writing, executed under penalty of perjury, and
13 verified on a form prescribed by the commissioner. If an applicant
14 proposes to engage in business as a residential mortgage loan
15 servicer as well as a residential mortgage lender, this information
16 shall be set forth in the application. The commissioner may issue
17 a license under this chapter to engage in business as a residential
18 mortgage lender or to engage in business as a residential mortgage
19 lender and residential mortgage loan servicer. A person filing an
20 application under this chapter to engage in business as a residential
21 mortgage lender and a residential mortgage loan servicer is not
22 required to file an application under Chapter 3 (commencing with
23 Section 50130).

24 (b) The application shall contain the name and complete business
25 and residential address or addresses of the applicant. If the applicant
26 is a partnership, association, corporation, or other entity, the
27 application shall contain the names and complete business and
28 residential addresses of each member, director, and principal
29 officer. The application also shall include a description of the
30 activities of the applicant in the detail and for the periods that the
31 commissioner may require, including all of the following:

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

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

38 (3) Information as to the character, fitness, financial and business
39 responsibility, background, experience, and criminal convictions
40 of any of the following:

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

3 (B) Any person that controls, directly or indirectly, the election
4 of 25 percent or more of the members of the board of directors of
5 an applicant.

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

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

10 (5) A description of any adverse judgments entered in court
11 actions filed by borrowers based upon allegations of fraud,
12 misrepresentation, or dishonesty in the conduct of the person's
13 business.

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

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

16 (c) The commissioner may, by rule, require an applicant for a
17 residential mortgage ~~loan~~ lender license to apply through the
18 Nationwide Mortgage Licensing System and Registry, and may
19 ~~adopt regulations by rule waive or amend the requirements of this~~
20 ~~section~~ to accommodate the uniform forms of that registry.

21 ~~SEC. 67.~~

22 *SEC. 63.* Section 50124 of the Financial Code is amended to
23 read:

24 50124. (a) A license application must be accompanied by an
25 exhibit containing statements that the applicant agrees to do the
26 following:

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

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

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

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

38 (5) To account or deliver to a person any personal property such
39 as money, funds, deposit, check, draft, mortgage, other document,
40 or thing of value, that has come into its possession and is not its

1 property, or that it is not in law or equity entitled to retain under
2 the circumstances, at the time that has been agreed upon or is
3 required by law, or, in the absence of a fixed time, upon demand
4 of the person entitled to the accounting or delivery.

5 (6) To file with the commissioner an amendment to its
6 application prior to any material change in the information
7 contained in the application for licensure, including, without
8 limitation, the plan of operation. The commissioner shall, within
9 20 business days of receiving a completed amendment to the
10 application, or within a longer time if agreed to by the licensee,
11 issue an order approving or disapproving the effectiveness of the
12 proposed amendment.

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

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

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

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

25 (11) To refrain from employing, or paying a commission or
26 other fee, to a mortgage loan originator who is not licensed or
27 registered in this state, *unless the individual is exempt from*
28 *licensure.*

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

31 (1) Has complied with all applicable state and federal tax return
32 filing requirements for the past three years or has filed with the
33 commissioner an accountant's or attorney's statement as to why
34 no return was filed.

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

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

3 (4) Is not insolvent.

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

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

7 ~~(7)~~

8 (c) The commissioner may ~~adopt regulations by rule~~ *waive or*
9 *amend the requirements of this section* to accommodate the uniform
10 forms of the Nationwide Mortgage Licensing System and Registry.

11 ~~SEC. 68.~~

12 *SEC. 64.* Section 50125 of the Financial Code is amended to
13 read:

14 50125. The commissioner may refuse to issue a residential
15 mortgage loan license if any of the following apply:

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

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

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

22 ~~SEC. 69.~~

23 *SEC. 65.* Section 50126 of the Financial Code is amended to
24 read:

25 50126. (a) Upon reasonable notice and opportunity to be heard,
26 the commissioner may deny an application for any of the following
27 reasons:

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

30 (2) Any officer, director, general partner, or person owning or
31 controlling, directly or indirectly, 10 percent or more of the
32 outstanding interests or equity securities of the applicant has, within
33 the last 10 years, (A) been convicted of, or pleaded nolo contendere
34 to, a crime or (B) committed any act involving dishonesty, fraud,
35 or deceit, if the crime or act is substantially related to the
36 qualifications, functions, or duties of a person engaged in business
37 in accordance with this division.

38 (3) The applicant or any officer, director, general partner, or
39 person owning or controlling, directly or indirectly, 10 percent or
40 more of the outstanding interests or equity securities of the

1 applicant, has violated any provision of this division or the rules
2 thereunder or any similar regulatory scheme of the State of
3 California or a foreign jurisdiction.

4 (4) The applicant employs a mortgage loan originator who is
5 not licensed in this state, *unless the mortgage loan originator is*
6 *exempt from licensure.*

7 (b) The application shall be considered withdrawn within the
8 meaning of this section if the applicant fails to respond to a written
9 notification of a deficiency in the application within 90 days of
10 the date of the notification.

11 (c) The commissioner shall, within 60 days from the filing of
12 a full and complete application for a license, including the receipt
13 of background and investigative reports from the Department of
14 Justice or other government agencies, and the payment of the fees
15 required by ~~Section 50121~~ *Sections 50110.1 and 50121, as*
16 *applicable*,, issue either a license or a statement of issues prepared
17 in accordance with Chapter 5 (commencing with Section 11500)
18 of Part 1 of Division 3 of Title 2 of the Government Code.

19 ~~SEC. 70.~~

20 *SEC. 66.* Section 50130 of the Financial Code is amended to
21 read:

22 50130. (a) A mortgage servicer shall file an application for
23 licensure under this chapter with the commissioner to service
24 mortgage loans in this state by satisfying the requirements of this
25 chapter and the applicable provisions, as determined by the
26 commissioner, of Chapter 2 (commencing with Section 50120).

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

29 (1) Filing with the commissioner an application containing the
30 information required by Section 50122, and any additional
31 information the commissioner may require by rule.

32 (2) Paying the investigation and application fees required by
33 Section 50121.

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

35 (4) Complying with the applicable provisions of Chapter 2
36 (commencing with Section 50120).

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

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

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

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

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

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

30 (i) The commissioner may, by rule, require an applicant for a
31 ~~mortgage~~ *residential mortgage loan servicer* servicer license to
32 apply through the Nationwide Mortgage Licensing System and
33 Registry, and may ~~adopt regulations~~ *by rule waive or amend the*
34 *requirements of this section* to accommodate the uniform forms
35 of that registry.

36 ~~SEC. 71.~~

37 *SEC. 67.* 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 or
9 registered *in this state* through the Nationwide Mortgage Licensing
10 System and Registry, *unless the mortgage loan originator is exempt*
11 *from licensure.*

12 ~~SEC. 72.~~

13 *SEC. 68.* Section 50205 of the Financial Code is amended to
14 read:

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

37 (b) When an action is commenced on a licensee's bond, the
38 commissioner may require the filing of a new bond. Immediately
39 upon the recovery of an action on the bond, the licensee shall file
40 a new bond. Failure to file a new bond within 10 days of the

1 recovery on a bond, or within 10 days after notification by the
2 commissioner that a new bond is required, constitutes sufficient
3 grounds for the suspension or revocation of the license.

4 *SEC. 69. Section 50208 of the Financial Code is amended to*
5 *read:*

6 50208. The license shall state the name of the licensee. If the
7 licensee is a partnership, the license shall state the names of its
8 general partners. If the licensee is a corporation or an association,
9 the license shall state the date and place of the corporation's
10 incorporation or organization and the address of the licensee's
11 principal business location. The license shall state whether the
12 licensee is licensed as a residential mortgage loan lender—~~or~~
13 ~~servicer, servicer, or mortgage loan originator.~~

14 ~~SEC. 73:~~

15 *SEC. 70. Section 50209 is added to the Financial Code, to read:*

16 50209. (a) Every *residential mortgage lender and residential*
17 *mortgage loan servicer* licensee shall establish a record with and
18 maintain a unique identifier through the Nationwide Mortgage
19 Licensing System and Registry.

20 (b) ~~A~~ Every *residential mortgage lender and residential*
21 *mortgage loan servicer* licensee shall require and ensure that every
22 mortgage loan originator employed or compensated by the licensee
23 is licensed or registered as a mortgage loan originator under this
24 division or another provision of law in this state that meets the
25 requirements of Section 1508(d) of Title V of the Secure and Fair
26 Enforcement for Mortgage Licensing Act of 2008 (Public Law
27 110-289). ~~A licensee shall ensure that every mortgage loan~~
28 ~~originator employed or compensated by the licensee is licensed or~~
29 ~~registered through the Nationwide Mortgage Licensing System~~
30 ~~and Registry and maintains a unique identifier through that system.~~
31 *110-289) and maintains a unique identifier through the Nationwide*
32 *Mortgage Licensing System and Registry.*

33 (c) *A licensee shall not make or service a loan that was offered*
34 *by, negotiated by, or applied for through a mortgage loan*
35 *originator who does not maintain a unique identifier through the*
36 *Nationwide Mortgage Licensing System and Registry.*

37 (d) *Subdivisions (b) and (c) shall not be applicable where a*
38 *mortgage loan originator is not subject to licensure or registration*
39 *under any provision of state law and the Secure and Fair*
40 *Enforcement for Mortgage Licensing Act of 2008.*

1 *SEC. 71. Section 50307 of the Financial Code is amended to*
2 *read:*

3 50307. (a) Each licensee shall file a report with the
4 commissioner annually, on or before the first day of March, giving
5 the relevant information that the commissioner reasonably requires
6 to make the calculation required by subdivision (a) of Section
7 50401 and Section 50205. The report shall be made under oath
8 and in the form prescribed by the commissioner.

9 (b) A licensee shall make any other special reports to the
10 commissioner that the commissioner may, from time to time,
11 require.

12 (c) If any person subject to this division fails to make a report
13 required by law or by the commissioner, the commissioner may
14 immediately cause the books, records, papers, and affairs of that
15 person to be thoroughly examined.

16 ~~SEC. 74.~~

17 *SEC. 72. Section 50309 of the Financial Code is amended to*
18 *read:*

19 50309. The commissioner shall require licensees to maintain
20 a file of all advertising copy for a period of 90 days from the date
21 of its use. The file shall be available to the commissioner upon
22 request.

23 ~~SEC. 75. Section 50309.1 is added to the Financial Code, to~~
24 ~~read:~~

25 ~~50309.1. (a) Each licensee, prior to the first use of any~~
26 ~~proposed advertisement with regard to the business subject to this~~
27 ~~division, shall submit a true copy thereof to the commissioner for~~
28 ~~approval.~~

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

34 *SEC. 73. Section 50310 of the Financial Code is amended to*
35 *read:*

36 50310. ~~Nothing~~ *Except for mortgage loan originators, nothing*
37 *in this law shall preclude a person whose license has been*
38 *suspended or revoked, summarily or otherwise, from continuing*
39 *to service residential mortgage loans pursuant to servicing contracts*
40 *in existence at the time of the suspension for a reasonable transition*

1 period, as determined by the commissioner, after the date of the
2 entry of the final decision in the case suspending or revoking the
3 license.

4 *SEC. 74. Section 50311 of the Financial Code is amended to*
5 *read:*

6 50311. ~~Nothing~~ *Except for mortgage loan originators, nothing*
7 *in this law shall preclude a person whose license has been*
8 *suspended or revoked, summarily or otherwise, from making a*
9 *residential mortgage loan pursuant to a commitment issued by that*
10 *person prior to the suspension or revocation. A prospective*
11 *borrower who received a commitment issued by a person whose*
12 *license has been suspended or revoked may, prior to the closing*
13 *of the loan, terminate the commitment and receive a refund of all*
14 *money paid to that person.*

15 ~~SEC. 76.~~

16 *SEC. 75. Section 50314 of the Financial Code is amended to*
17 *read:*

18 50314. (a) Every person subject to this division shall keep
19 documents and records that will properly enable the commissioner
20 to determine whether the residential mortgage lending or residential
21 mortgage loan servicing functions performed by that person comply
22 with the provisions of this division and with all rules and orders
23 made by the commissioner under this division. Upon request of
24 the commissioner, residential mortgage lenders and residential
25 mortgage loan servicers shall file an authorization for disclosure
26 to the commissioner of financial records of the licensed business
27 pursuant to Section 7473 of the Government Code.

28 (b) The business documents and records of every residential
29 mortgage lender or residential mortgage loan servicer, whether
30 required to be licensed under this division or not, are subject to
31 inspection and examination by the commissioner at any time
32 without prior notice. The provisions of this subdivision shall not
33 apply to persons specified in subdivision (h) of Section 50003.

34 Any person subject to this division shall, upon request and within
35 the time specified in the request, allow inspection and copying of
36 any documents and records by the commissioner or his or her
37 authorized representative.

38 (c) The cost of every inspection and examination of a licensee,
39 *mortgage loan originator*, or other person subject to this division
40 shall be paid to the commissioner by the licensee, *mortgage loan*

1 *originator*, or person examined, and the commissioner may
2 maintain an action for the recovery of these costs in any court of
3 competent jurisdiction. In determining the cost of any inspection
4 or examination, the commissioner may use the estimated average
5 hourly cost, including overhead, for all persons performing
6 inspections or examinations of licensees or other persons subject
7 to this division for the fiscal year.

8 For the purpose of this subdivision only, no person other than a
9 licensee shall be deemed to be a person subject to this division
10 unless and until the person is determined to be a person subject to
11 this division by an administrative hearing in accordance with
12 Chapter 5 (commencing with Section 11500) of Part 1 of Division
13 3 of Title 2 of the Government Code, or by a judicial hearing in
14 any court of competent jurisdiction.

15 (d) Investigation and examination reports prepared by the
16 commissioner's duly designated representatives are not public
17 reports. Those reports may be disclosed to the officers or directors
18 of a licensee that is the subject of the report for the purpose of
19 corrective action by the officers or directors. Such a disclosure
20 shall not operate as a waiver of the exemption specified in
21 subdivision (d) of Section 6254 of the Government Code.

22 *SEC. 76. Section 50317 of the Financial Code is amended to*
23 *read:*

24 50317. (a) Any person who has been convicted of, or pleaded
25 nolo contendere to any crime specified in subdivision (b) within
26 the past 10 years or has been held liable in any civil action by final
27 judgment or any administrative judgment by any public agency
28 within the past seven years, of any of the provisions specified in
29 subdivision (b), shall not serve as an officer, director, partner,
30 shareholder controlling 10 percent or more of the ownership
31 interests, trustee, or employee of a residential mortgage lender or
32 residential mortgage loan servicer. This subdivision shall not apply
33 to any person whose office, employment, ownership interest, or
34 other participation in the business of a licensed residential mortgage
35 lender or residential mortgage loan servicer commenced prior to
36 January 1, 1995, or whose criminal conviction, plea, or judgment
37 occurred prior to January 1, 1995.

38 (b) Subdivision (a) applies to criminal convictions of, pleas of
39 nolo contendere to, or civil or administrative judgments entered
40 for offenses including the following:

- 1 (1) Offenses specified in Chapter 18 (commencing with Section
2 3350) of Division 1.
- 3 (2) Offenses specified in Article 4 (commencing with Section
4 5300) of Chapter 1 of Division 2.
- 5 (3) Offenses specified in Article 8 (commencing with Section
6 14750) of Chapter 4 of Division 5.
- 7 (4) Offenses specified in Chapter 7 (commencing with Section
8 17700) of Division 6.
- 9 (5) Offenses specified in Chapter 6 (commencing with Section
10 18435) of Division 7.
- 11 (6) Offenses specified in provisions of the laws of the United
12 States added or amended by the federal Financial Institutions
13 Reform, Recovery and Enforcement Act of 1989 (Public Law
14 101-73).
- 15 (7) Offenses involving robbery, burglary, theft, embezzlement,
16 fraud, fraudulent conversion or misappropriation of property,
17 forgery, bookmaking, receiving stolen property, counterfeiting,
18 extortion, checks, credit cards, or computer violations specified
19 in Section 502 of the Penal Code. For the purpose of this section,
20 but not Section 50318, an offense does not include a conviction
21 for which the person has obtained a certificate of rehabilitation
22 from a court of competent jurisdiction under Section 1203.4 or
23 4852.13 of the Penal Code or a similar certificate of rehabilitation
24 obtained in a foreign jurisdiction.
- 25 (c) On and after January 1, 1995, any officer, director, or other
26 person who seeks a controlling ownership interest of 10 percent
27 or more in the business of a licensed residential mortgage lender
28 or residential mortgage loan servicer shall, as a condition to
29 obtaining that interest or participation, authorize the commissioner
30 to have access to that person's state summary criminal history
31 information, as defined in Section 11105 of the Penal Code, for
32 purposes of determining whether the person has a prior conviction
33 of, or pleaded nolo contendere to, a criminal offense specified in
34 subdivision (b).
- 35 (d) Any state summary criminal history information obtained
36 pursuant to this section shall be kept confidential and no recipient
37 shall disclose the contents other than for the purpose of acquisition
38 of an ownership interest in or other participation in the business
39 of a licensed residential mortgage lender or residential mortgage
40 loan servicer.

1 (e) Any person who knowingly violates subdivision (a),
2 including, but not limited to, any residential mortgage lender or
3 residential mortgage loan servicer who permits an ownership
4 interest in or other participation in the business of a residential
5 mortgage lender or residential mortgage loan servicer in violation
6 of subdivision (a) shall, upon conviction, be subject to punishment
7 as set forth in Section 50500.

8 (f) Nothing in this section shall be construed to permit the
9 reinstatement of any person barred by the commissioner pursuant
10 to Section 50320 nor to prohibit the commissioner from bringing
11 any action pursuant to Section 50320.

12 (g) If any provision of this section or the application of this
13 section to any person or circumstances is held invalid, that
14 invalidity shall not affect other provisions or applications of this
15 section that can be given effect without the invalid provision or
16 application, and to this end the provisions of this section are
17 severable.

18 (h) For purposes of this section, the term “employee” means
19 (1) a loan officer or other individual who negotiates agreements
20 with the public, ~~or~~ (2) an individual with access to or responsibility
21 for trust funds held by the licensee, *or* (3) a mortgage loan
22 originator.

23 *SEC. 77. Section 50318 of the Financial Code is amended to*
24 *read:*

25 50318. (a) The commissioner may, after appropriate notice
26 and opportunity for hearing, by order censure or suspend for a
27 period not exceeding 12 months, or bar from any position of
28 employment, management, or control any residential mortgage
29 lender or residential mortgage loan servicer, or any other person,
30 if the commissioner finds either of the following:

31 (1) That the censure, suspension, or bar is in the public interest
32 and that the person has committed or caused a violation of this
33 division or rule or order of the commissioner, and (A) the violation
34 was either known or should have been known by the person
35 committing or causing it, or (B) the violation has caused material
36 damage to the residential mortgage lender, residential mortgage
37 loan servicer, or to the public.

38 (2) That the person (A) has been convicted of or pleaded nolo
39 contendere to any crime, or (B) has been held liable in any civil
40 action by final judgment, or any administrative judgment by any

1 public agency, if that crime or civil or administrative judgment
2 involved any offense specified in subdivision (b) of Section 50317,
3 or any other offense reasonably related to the qualifications,
4 functions, or duties of a person engaged in the business in
5 accordance with the provisions of this division.

6 (b) Within 15 days from the date of a notice of intention to issue
7 an order pursuant to subdivision (a), the person may request a
8 hearing under the Administrative Procedure Act (Chapter 5
9 (commencing with Section 11500) of Part 1 of Division 3 of Title
10 2 of the Government Code). Upon receiving a request, the matter
11 shall be set for hearing to commence within 30 days after receipt
12 unless the person subject to this division consents to a later date.
13 If no hearing is requested within 15 days after the mailing or
14 service of the notice and none is ordered by the commissioner, the
15 failure to request a hearing shall constitute a waiver of the right to
16 a hearing.

17 (c) Upon receipt of a notice of intention to issue an order
18 pursuant to this section, the person who is the subject of the
19 proposed order is immediately prohibited from engaging in any
20 activities subject to licensure under the law.

21 (d) Persons suspended or barred under this section are prohibited
22 from participating in any business activity of a licensed residential
23 mortgage lender or residential mortgage loan servicer and from
24 engaging in any business activity on the premises where a licensed
25 residential mortgage lender or residential mortgage loan servicer
26 is conducting its business. This subdivision shall not be construed
27 to prohibit suspended or barred persons from having their personal
28 transactions processed by a licensed residential mortgage lender
29 or residential mortgage loan servicer.

30 (e) This section shall apply to any violation, conviction, plea,
31 or judgment after the enactment of this section.

32 (f) If any provision of this section or the application of this
33 section to any person or circumstances is held invalid, that
34 invalidity shall not affect other provisions or applications of this
35 section that can be given effect without the invalid provision or
36 application, and to this end the provisions of this section are
37 severable.

38 (g) For purposes of this section, the term “employee” means
39 (1) a loan officer or other individual who negotiates agreements
40 with the public, ~~or~~ (2) an individual with access to or responsibility

1 for trust funds held by the licensee, *or (3) a mortgage loan*
2 *originator.*

3 ~~SEC. 77.~~

4 *SEC. 78.* Section 50320 of the Financial Code is amended to
5 read:

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

16 *SEC. 79.* Section 50321 of the Financial Code is amended to
17 read:

18 50321. If, after investigation, the commissioner has reasonable
19 grounds to believe that any licensee *or mortgage loan originator*
20 has violated its articles of incorporation or any law or rule binding
21 upon it, the commissioner shall, by written order addressed to the
22 licensee *or mortgage loan originator*, direct the discontinuance of
23 the violation. The order shall be effective immediately, but shall
24 not become final except in accordance with the provisions of
25 Section 50323.

26 *SEC. 80.* Section 50322 of the Financial Code is amended to
27 read:

28 50322. If, after investigation, the commissioner has reasonable
29 grounds to believe that any licensee *or mortgage loan originator*
30 is conducting business in an unsafe or injurious manner, the
31 commissioner shall, by written order addressed to the licensee,
32 direct the discontinuance of the unsafe or injurious practices. The
33 order shall be effective immediately, but shall not become final
34 except in accordance with the provisions of Section 50323.

35 *SEC. 81.* Section 50323 of the Financial Code is amended to
36 read:

37 50323. (a) No order issued pursuant to Section 50321 or 50322
38 may become final except after notice to the affected licensee *or*
39 *mortgage loan originator* of the commissioner's intention to make
40 the order final and of the reasons for the finding. The commissioner

1 shall also notify the licensee *or mortgage loan originator* that upon
2 receiving a request the matter will be set for hearing to commence
3 within 15 business days after receipt. The licensee *or mortgage*
4 *loan originator* may consent to have the hearing commence at a
5 later date. If no hearing is requested within 30 days after the
6 mailing or service of the required notice, and none is ordered by
7 the commissioner, the order may become final without hearing
8 and the licensee *or mortgage loan originator* shall immediately
9 discontinue the practices named in the order. If a hearing is
10 requested or ordered, it shall be held in accordance with the
11 provisions of the Administrative Procedure Act (Chapter 5
12 (commencing with Section 11500) of Part 1 of Division 3 of Title
13 2 of the Government Code), and the commissioner shall have all
14 of the powers granted under that act. If, upon the hearing, it appears
15 to the commissioner that the licensee *or mortgage loan originator*
16 is conducting business in an unsafe and injurious manner or is
17 violating its articles of incorporation or any law of this state, or
18 any rule binding upon it, the commissioner shall make the order
19 of discontinuance final and the licensee *or mortgage loan*
20 *originator* shall immediately discontinue the practices named in
21 the order.

22 (b) The licensee *or mortgage loan originator* has 10 days after
23 an order is made final to commence an action to restrain
24 enforcement of the order. If the enforcement of the order is not
25 enjoined within 10 days by the court in which the action is brought,
26 the licensee *or mortgage loan originator* shall comply with the
27 order.

28 *SEC. 82. Section 50325 of the Financial Code is amended to*
29 *read:*

30 50325. The commissioner may immediately revoke the
31 residential mortgage lender's—~~or~~, residential mortgage loan
32 servicer's, *or mortgage loan originator's* license if the licensee *or*
33 *mortgage loan originator* fails to comply with any order issued
34 under Section 50318, 50319, 50321, 50322 or 50503. The
35 commissioner shall not revoke the license if, within 10 days from
36 the effective date of the revocation order, the licensee *or mortgage*
37 *loan originator* secures a court order restraining the enforcement
38 of the commissioner's revocation order.

39 *SEC. 83. Section 50326 of the Financial Code is amended to*
40 *read:*

1 50326. If any licensee *or mortgage loan originator* fails to do
2 any of the following, the licensee *or mortgage loan originator*
3 shall forfeit to the people of the state a sum of up to one hundred
4 dollars (\$100) for every day up to the 10th day: (a) to make any
5 report required by law or by the commissioner within 10 days from
6 the day designated for the making of the report, or within any
7 extension of time granted by the commissioner, or (b) fails to
8 include therein any matter required by law or by the commissioner.
9 Thereafter, any failure shall constitute grounds for the suspension
10 or revocation of the license held by the residential mortgage lender
11 ~~or~~, residential mortgage loan servicer, *or mortgage loan originator*.

12 *SEC. 84. Section 50327 of the Financial Code is amended to*
13 *read:*

14 50327. (a) The commissioner may, after notice and a
15 reasonable opportunity to be heard, suspend or revoke any license
16 if the commissioner finds that: (1) the licensee *or mortgage loan*
17 *originator* has violated any provision of this division or any rule
18 or order of the commissioner thereunder; or (2) any fact or
19 condition exists that, if it had existed at the time of the original
20 application for the license, reasonably would have warranted the
21 commissioner in refusing to issue the license originally.

22 (b) The power of investigation and examination by the
23 commissioner is not terminated by the surrender, suspension, or
24 revocation of any license issued by him or her.

25 ~~SEC. 78.~~

26 *SEC. 85. Section 50700 of the Financial Code is amended to*
27 *read:*

28 50700. (a) A residential mortgage lender, or a person, mortgage
29 loan originator, or employee acting under the authority of a
30 residential mortgage lender's license, shall not provide brokerage
31 services to a borrower, except as provided in subdivision (c).

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

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

1 (2) Obtaining or attempting to obtain, on behalf of a borrower,
2 a residential mortgage loan, as defined in subdivision (o) of Section
3 50003, secured by residential real estate, as defined in subdivision
4 (t) of Section 50003, made with the funds of another institutional
5 lender, as defined in paragraphs (1), (2), and (4) of subdivision (j)
6 of Section 50003, but closed in the name of the licensee, for a fee
7 paid by the borrower or the institutional lender.

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

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

14 (1) Provide brokerage services through independent contractors.

15 (2) Provide brokerage services through an employee not licensed
16 as a mortgage loan originator.

17 (3) Obtain or attempt to obtain for a borrower a residential
18 mortgage loan that is a “high cost mortgage,” referred to in Section
19 152(aa)(1) of the Home Ownership and Equity Protection Act of
20 1994, as amended (15 U.S.C. Sec. 1602 (aa)).

21 (4) Hold itself out to borrowers, through advertising, as a
22 mortgage broker, rather than a residential mortgage lender.
23 However, a licensee shall disclose its status as a broker or agent
24 when that disclosure is required by law.

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

27 ~~SEC. 79.~~

28 *SEC. 86.* Section 50701 of the Financial Code is amended to
29 read:

30 50701. (a) As soon as practical after a borrower requests that
31 the licensee arrange a loan to be made by another institutional
32 lender, and before the licensee performs brokerage services for
33 the borrower, the licensee and borrower shall enter into a written
34 loan brokerage agreement that satisfies the requirements of this
35 section.

36 (b) Both the licensee’s authorized representative and the
37 borrower shall sign and date the loan brokerage agreement, and
38 the licensee shall deliver a copy of the fully executed loan
39 brokerage agreement to the borrower either upon execution, if the
40 documents are signed in the licensee’s office, or within three

1 business days after execution. The loan brokerage agreement shall
2 include the mortgage loan originator's unique identifier.

3 (c) The loan brokerage agreement shall contain an explicit
4 statement that (1) the licensee is acting as the agent of the borrower
5 in providing brokerage services to the borrower, and (2) when
6 acting as agent for the borrower, it owes to that borrower a
7 fiduciary duty of utmost care, honesty, and loyalty in the
8 transaction, including the duty of full disclosure of all material
9 facts. If the licensee is authorized to act as an agent for any other
10 person, the brokerage agreement shall contain a statement of that
11 fact and identification of that person.

12 (d) The loan brokerage agreement shall contain a detailed
13 description of the services the licensee agrees to perform for the
14 borrower, and a good faith estimate of any fees the licensee will
15 receive for those services, whether paid by the borrower, the
16 institutional lender, or both.

17 (e) The loan brokerage agreement shall carry a clear and
18 conspicuous statement of the conditions under which the borrower
19 is obligated to pay the licensee for brokerage services rendered
20 under the agreement.

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

26 (1) Rescind the brokerage agreement.

27 (2) Recover fees paid by the borrower to the licensee for
28 brokerage services rendered by the licensee pursuant to the
29 agreement.

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

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

35 (h) The loan brokerage agreement shall be the only agreement
36 between the borrower and the licensee with respect to a single
37 loan.

38 (i) A licensee whose services to a borrower are limited to
39 providing brokerage services may not require a borrower to pay

1 fees or charges before the residential mortgage loan closing, other
 2 than either of the following:

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

10 (2) An application fee.

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

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

18 (1) The agreement specifies the services to be rendered for the
 19 application fee.

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

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

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

29 SEC. 80. Section 50705 of the Financial Code is repealed.

30 ~~SEC. 81.~~

31 SEC. 87. The Legislature finds and declares that Sections 5,
 32 ~~47, and 63~~ 43, and 59 of this act imposes a limitation on the
 33 public’s right of access to the meetings of public bodies or the
 34 writings of public officials and agencies within the meaning of
 35 Section 3 of Article I of the California Constitution. Pursuant to
 36 that constitutional provision, the Legislature makes the following
 37 findings to demonstrate the interest protected by this limitation
 38 and the need for protecting that interest:

39 In order to allow the Department of Real Estate and the
 40 Department of Corporations to fully accomplish their goals, it is

1 imperative to protect the interests of those persons submitting
2 information to the departments to ensure that any personal or
3 sensitive business information that this act requires those persons
4 to submit is protected as confidential information.

5 ~~SEC. 82.~~

6 *SEC. 88.* No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.

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