

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

December 18, 2008

An act to amend Sections 10140.6, 10150, 10235.5, and 10236.4 of, to add Article 2.1 (commencing with Section 10166.01) to Chapter 2 of Division 4 of, and to repeal Section 10131.8 of, the Business and Professions Code, *to amend Sections 22057, 22060, 22100, 22101, 22101.5, 22102, 22103, 22104, 22106, 22107, 22109, 22151, 22152, 22153, 22154, 22155, 22156, 22157, 22159, 22168, 22169, 22171, 22700, 50002, 50003, 50120, 50121, 50122, 50123, 50124, 50125, 50126, 50127, 50128, 50129, 50130, 50200, 50201, 50202, 50205, 50206, 50208, 50302, 50307, 50317, 50318, 50320, 50325, 50328, 50333, 50401, 50700, and 50701 of, to add Sections 22012, 22013, 22014, 22105.1, 22105.2, 22105.3, 22105.4, 22109.1, 22109.2, 22109.3, 22109.4, 22109.5, 22109.6, 22347, 22755, 50002.5, 50003.5, 50003.6, 50209, and 50307.2 to, to add Chapter 3.5 (commencing with Section 50140) and Chapter 3.6 (commencing with Section 50150) to Division 20 of, and to repeal Sections 50601 and 50602 of, the Financial Code, relating to mortgages.*

LEGISLATIVE COUNSEL'S DIGEST

SB 36, as amended, Calderon. Real estate, *finance lender, and residential mortgage lender licenses:—mortgages mortgage loan originators.*

Existing

(1) Existing law, the Real Estate Law, governs the licensing and regulation of real estate licensees, as defined, as administered by the

Real Estate Commissioner. Existing law imposes specified requirements on real estate brokers who solicit borrowers or lenders or negotiate loans or collect payments or perform services for borrowers or lenders relative to loans secured by real property. A willful violation of the Real Estate Law is a crime.

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

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

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

System and Registry and would require applicants for licensure or license renewal to satisfy certain requirements, including educational requirements. The bill would require finance lenders and brokers, and residential mortgage lenders and servicers, that employ a mortgage loan originator to maintain a minimum net worth of \$250,000. The bill would authorize the commissioner to require finance lenders and brokers, and residential mortgage lenders and servicers, that employ a mortgage loan originator to submit reports of condition to the Nationwide Mortgage Licensing System and Registry. The bill would authorize the commissioner to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry, as specified, for the purposes of implementing these provisions of the bill. The bill would require a mortgage loan originator to use or disclose a specified unique identifier on all mortgage loan applications, solicitations, or advertisements. The bill would enact other related provisions. The bill would make these provisions relating to mortgage loan originators under the California Finance Lenders Law and the California Residential Mortgage Lending Act operative on July 31, 2010.

Because

(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. Section 10131.8 of the Business and Professions
- 2 Code is repealed.
- 3 SEC. 2. Section 10140.6 of the Business and Professions Code
- 4 is amended to read:
- 5 10140.6. (a) A real estate licensee shall not publish, circulate,
- 6 distribute, or cause to be published, circulated, or distributed in
- 7 any newspaper or periodical, or by mail, any matter pertaining to
- 8 any activity for which a real estate license is required that does

1 not contain a designation disclosing that he or she is performing
2 acts for which a real estate license is required.

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

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

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

24 (c) The provisions of this section shall not apply to classified
25 rental advertisements reciting the telephone number at the premises
26 of the property offered for rent or the address of the property
27 offered for rent.

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

31 SEC. 3. Section 10150 of the Business and Professions Code
32 is amended to read:

33 10150. (a) Application for the real estate broker license
34 examination shall be made in writing to the commissioner. The
35 commissioner may prescribe the format and content of the broker
36 examination application. The application for the broker
37 examination shall be accompanied by the real estate broker license
38 examination fee.

39 (b) Persons who have been notified by the commissioner that
40 they passed the real estate broker license examination may apply

1 for a real estate broker license. A person applying for the broker
2 examination may also apply for a real estate broker license.
3 However, a license shall not be issued until the applicant passes
4 the real estate broker license examination. If there is any change
5 to the information contained in a real estate broker license
6 application after the application has been submitted and before the
7 license has been issued, the commissioner may require the applicant
8 to submit a supplement to the application listing the changed
9 information.

10 (c) Application for the real estate broker license shall be made
11 in writing to the commissioner. The commissioner may prescribe
12 the format and content of the broker license application. The
13 application for the real estate broker license shall be accompanied
14 by the appropriate fee.

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

23 SEC. 4. Article 2.1 (commencing with Section 10166.01) is
24 added to Chapter 2 of Division 4 of the Business and Professions
25 Code, to read:

26
27 Article 2.1. Secure and Fair Enforcement for Mortgage Licenses

28
29 10166.01. For purposes of this article, the following definitions
30 shall apply:

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

33 (b) (1) “Mortgage loan originator” means an individual who
34 takes a residential mortgage loan application ~~and~~ or offers or
35 negotiates terms of a residential mortgage loan for compensation
36 or gain. An individual real estate licensee acting within the meaning
37 of paragraph (d) of Section 10131 is a mortgage loan originator
38 for purposes of this article with respect to activities involving
39 residential mortgage loans.

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

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

12 (B) An individual that is not compensated by a lender, other
13 mortgage loan originator, or by any agent of any lender or other
14 mortgage loan originator.

15 (C) An individual that is solely involved in extensions of credit
16 relating to timeshare plans, as that term is defined in Section
17 101(53D) of Title 11 of the United States Code.

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

21 (c) “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 mortgage loan originators.

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

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

38 (f) “*Loan processor or underwriter*” means an individual who
39 *performs clerical or support duties as an employee at the direction*

1 *of, and subject to the supervision and instruction of, a mortgage*
2 *loan originator.*

3 10166.02. (a) A real estate broker who acts pursuant to Section
4 10131.1 or subdivision (d) or (e) of Section 10131, and who makes,
5 arranges, or services loans secured by real property containing one
6 to four residential units, shall notify the department within 30 days
7 of the effective date of this section or upon commencing that
8 activity, whichever is later. The notification shall be made in
9 writing on a form that is acceptable to the commissioner.

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

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

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

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

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

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

30 (f) A real estate broker who fails to notify the department
31 pursuant to subdivision (a), or who fails to obtain a license
32 endorsement required pursuant to subdivision (b), shall be assessed
33 a penalty of fifty dollars (\$50) per day for each day written
34 notification has not been received or a license endorsement has
35 not been obtained, up to and including the 30th day after the first
36 day of the assessment penalty. On and after the 31st day, the
37 penalty is one hundred dollars (\$100) per day, not to exceed a total
38 penalty of ten thousand dollars (\$10,000), regardless of the number
39 of days, until the department receives the written notification or

1 the licensee obtains the license endorsement. Penalties for
2 violations of subdivisions (a) and (b) shall be additive.

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

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

12 *10166.03. (a) A loan processor or underwriter who does not*
13 *represent to the public, through advertising or other means of*
14 *communicating or providing information, including the use of*
15 *business cards, stationery, brochures, signs, rate lists, or other*
16 *promotional items, that the individual can or will perform any of*
17 *the activities of a mortgage loan originator shall not be required*
18 *to obtain a license endorsement as a mortgage loan originator.*

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

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

36 ~~10166.03.~~

37 *10166.04. (a) In connection with an application to the*
38 *commissioner for a license endorsement as a mortgage loan*
39 *originator, every applicant shall furnish to the Nationwide*

1 Mortgage Licensing System and Registry information concerning
2 the applicant's identity, including the following:

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

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

10 (A) An independent credit report from a consumer reporting
11 agency.

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

14 ~~(b) The requirements of subdivision (a) are satisfied if the~~
15 ~~applicant has previously complied with Section 10152 to the~~
16 ~~satisfaction of the commissioner.~~

17 ~~(e) The commissioner shall request subsequent arrest notification~~
18 ~~service from the Department of Justice, as provided pursuant to~~
19 ~~Section 11105.2 of the Penal Code, in connection with an applicant~~
20 ~~for a license endorsement as a mortgage loan originator.~~

21 *(b) If the Nationwide Mortgage Licensing System and Registry*
22 *electronically submits fingerprint images and related information,*
23 *as required by the Department of Justice, for an applicant for a*
24 *mortgage loan originator license endorsement, to the Department*
25 *of Justice for the purposes of obtaining information as to the*
26 *existence and content of a record of state convictions and state*
27 *arrests, and as to the existence and content of a record of state*
28 *arrests for which the Department of Justice establishes that the*
29 *person is free on bail or on his or her recognizance pending trial*
30 *or appeal, the Department of Justice shall provide an electronic*
31 *response to the Nationwide Mortgage Licensing System and*
32 *Registry pursuant to paragraph (1) of subdivision (p) of Section*
33 *11105 of the Penal Code, and shall provide the same electronic*
34 *response to the department.*

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

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

3 ~~10166.04.~~

4 10166.05. Notwithstanding any other provision of law, the
5 commissioner shall not issue a license endorsement to act as a
6 mortgage loan originator to an applicant unless the commissioner
7 makes all of the following findings:

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

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

15 (1) During the seven year period preceding the date of the
16 application for licensing.

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

20 (c) The applicant has demonstrated *such* financial responsibility,
21 character, and general fitness ~~such~~ as to command the confidence
22 of the community and warrant a determination that the mortgage
23 loan originator will operate honestly, fairly, and efficiently within
24 the purposes of the article.

25 (d) The applicant has complied with the education and written
26 testing requirements in Section ~~10166.05~~ 10166.06.

27 ~~10166.05.~~

28 10166.06. (a) In addition to the requirements of Section 10153,
29 an applicant for a license endorsement as a mortgage loan
30 originator shall complete at least 20 hours of education courses,
31 which shall include at least the following:

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

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

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

37 (b) For purposes of this section, education courses are only
38 acceptable if they have been reviewed and approved, or otherwise
39 deemed acceptable, by the Nationwide Mortgage Licensing System
40 and Registry, in accordance with the SAFE Act, and by the

1 commissioner. Education may be offered in a classroom, online,
2 or by any other means approved by the Nationwide Mortgage
3 Licensing System and Registry, in accordance with the SAFE Act,
4 and by the commissioner. The commissioner may substitute any
5 of the courses described in subdivision (a) for the course
6 requirements of Section 10153.2, 10153.3, 10153.4, or 10153.5,
7 subject to a finding that the course requirements in subdivision (a)
8 are substantially equivalent to, and meet the intent of, Section
9 10153.2, 10153.3, 10153.4, or 10153.5, as applicable.

10 *(c) A person who successfully completes the education*
11 *requirements approved by the Nationwide Mortgage Licensing*
12 *System and Registry in any state other than California shall be*
13 *granted credit by the commissioner toward completion of the*
14 *education requirements of this section.*

15 ~~(e)~~

16 *(d) Before being issued a license endorsement to act as a*
17 *mortgage loan originator, an individual shall pass a qualified*
18 *written test developed or otherwise deemed acceptable by the*
19 *Nationwide Mortgage Licensing System and Registry and*
20 *administered by a test provider approved or otherwise deemed*
21 *acceptable by the Nationwide Mortgage Licensing System and*
22 *Registry.*

23 ~~(d)~~

24 *(e) A written test shall not be treated as a qualified written test*
25 *for purposes of this section, unless the test adequately measures*
26 *the applicant's knowledge and comprehension in the following*
27 *subject areas: ethics, federal law and regulation pertaining to*
28 *mortgage origination, state law and regulation pertaining to*
29 *mortgage origination, and federal and state law and regulation*
30 *relating to fraud, consumer protection, the nontraditional mortgage*
31 *marketplace, and fair lending issues.*

32 ~~(e)~~

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

39 ~~(f)~~

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

5 ~~(g)~~

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

9 ~~(h)~~

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

12 ~~(i)~~

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

17 ~~10166.06.~~

18 10166.07. (a) A real estate broker who acts pursuant to Section
19 10131.1 or subdivision (d) or (e) of Section 10131, and who makes,
20 arranges, or services one or more loans in a calendar year that are
21 secured by real property containing one to four residential units,
22 shall annually file a business activities report, within 90 days after
23 the end of the broker's fiscal year or within any additional time as
24 the commissioner may allow for filing for good cause. The report
25 shall contain within its scope all of the following information for
26 the fiscal year, relative to the business activities of the broker and
27 those of any other brokers and real estate salespersons acting under
28 that broker's supervision:

29 (1) Name and license number of the supervising broker and
30 names and license numbers of the real estate brokers and
31 salespersons under that broker's supervision. The report shall
32 include brokers and salespersons who were under the supervising
33 broker's supervision for all or part of the year.

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

38 (A) Activities relating to mortgages, including arranging,
39 making, or servicing.

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

3 (C) Activities performed under related licenses, including, but
4 not limited to, a license to engage as a finance lender or a finance
5 broker under the California Finance Lenders Law (Division 9
6 (commencing with Section 22000) of the Financial Code), or a
7 license to engage as a residential mortgage lender or residential
8 mortgage loan servicer under the California Residential Mortgage
9 Lending Act (Division 20 (commencing with Section 50000) of
10 the Financial Code).

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

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

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

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

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

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

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

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

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

38 (6) For all loans made, brokered, or serviced, the total number
39 and aggregate principal amount of loans funded by institutional

1 lenders, and the total number and aggregate principal amount of
2 loans funded by private lenders.

3 (7) For all loans made, brokered, or serviced, the total number
4 and aggregate principal amount of loans that included a prepayment
5 penalty, the minimum prepayment penalty length, the maximum
6 prepayment penalty length, and the number of loans with
7 prepayment penalties whose length exceeded the length of time
8 before the borrower's loan payment amount could increase.

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

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

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

20 (11) For purposes of this section, an institutional lender has the
21 meaning specified in paragraph (1) of subdivision (c) of Section
22 10232.

23 (b) A broker subject to this section and Section 10232.2 may
24 file consolidated reports that include all of the information required
25 under this section and Section 10232.2. Those consolidated reports
26 shall clearly indicate that they are intended to satisfy the
27 requirements of both sections.

28 (c) If a broker subject to this section fails to timely file the report
29 required under this section, the commissioner may cause an
30 examination and report to be made and may charge the broker one
31 and one-half times the cost of making the examination and report.
32 In determining the hourly cost incurred by the commissioner for
33 conducting an examination and preparing the report, the
34 commissioner may use the estimated average hourly cost for all
35 department audit staff performing audits of real estate brokers. If
36 a broker fails to pay the commissioner's cost within 60 days of the
37 mailing of a notice of billing, the commissioner may suspend the
38 broker's license or deny renewal of that license. The suspension
39 or denial shall remain in effect until the billed amount is paid or
40 the broker's right to renew a license has expired. The commissioner

1 may maintain an action for the recovery of the billed amount in
2 any court of competent jurisdiction.

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

6 ~~10166.07.~~

7 *10166.08.* Each mortgage loan originator shall submit reports
8 of condition to the Nationwide Mortgage Licensing System and
9 Registry reports of condition, and those reports shall be in the form
10 and shall contain information as the Nationwide Mortgage
11 Licensing System and Registry may require.

12 ~~10166.08.~~

13 *10166.09.* The minimum standards for renewal of an
14 endorsement as a mortgage loan originator shall include the
15 following:

16 (a) The mortgage loan originator continues to meet the minimum
17 standards for obtaining an endorsement as a mortgage loan
18 originator.

19 (b) The mortgage loan originator satisfies the annual continuing
20 education requirements described in Section ~~10166.09~~ *10166.10.*

21 ~~10166.09.~~

22 *10166.10.* (a) A mortgage loan originator shall complete at
23 least eight hours of continuing education annually, which shall
24 include at least three hours relating to federal law and regulations,
25 two hours of ethics, which shall include instruction on fraud,
26 consumer protection, and fair lending issues, and two hours related
27 to lending standards for the nontraditional mortgage product
28 marketplace.

29 (b) For purposes of subdivision (a), continuing education courses
30 and course providers shall be reviewed and approved by the
31 commissioner and the Nationwide Mortgage Licensing System
32 and Registry.

33 (c) The commissioner shall have the authority to substitute any
34 of the courses described in subdivision (a) for the course
35 requirements of Section 10170.5, subject to a finding that the
36 course requirements in subdivision (a) are substantially equivalent
37 to, and meet the intent of, Section 10170.5.

38 (d) Nothing in this section shall preclude any education course,
39 as approved by the commissioner and the Nationwide Mortgage
40 Licensing System and Registry, that is provided by the employer

1 of the mortgage loan originator or an entity that is affiliated with
2 the mortgage loan originator by an agency contract, or any
3 subsidiary or affiliate of the employer or entity.

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

7 (f) A mortgage loan originator may only receive credit for a
8 continuing education course in the year in which the course is
9 taken.

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

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

17 (i) A person who successfully completes the education
18 requirements approved by the Nationwide Mortgage Licensing
19 System and Registry in any state other than California shall be
20 granted credit by the commissioner towards completion of
21 continuing education requirements in this state.

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

27 ~~10166.10.~~

28 *10166.11.* (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 loans secured by real property containing one
31 to four residential units, shall keep documents and records that
32 will properly enable the commissioner to determine whether the
33 residential mortgage brokerage, servicing, and lending functions
34 performed by the broker comply with this division and with all
35 applicable rules and orders made by the commissioner. These
36 documents shall include, at a minimum, the documents described
37 in Section 10148. Upon request of the commissioner, a real estate
38 broker shall file an authorization for disclosure to the commissioner
39 of financial records of his or her licensed business pursuant to
40 Section 7473 of the Government Code.

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

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

20 ~~10166.11.~~

21 *10166.12.* (a) As often as the commissioner deems necessary
22 and appropriate, the commissioner shall examine the affairs of
23 each real estate broker who is required to notify the commissioner
24 or obtain a license endorsement pursuant to Section 10166.02 for
25 compliance with this part. These examinations shall also include
26 a review of the affairs of all real estate brokers and real estate
27 salespersons acting under the supervision of each real estate broker
28 who is required to file reports with the department pursuant to
29 ~~Section 10166.06~~ *10166.07*. The commissioner shall appoint
30 suitable persons to perform these examinations. The commissioner
31 and his or her appointees may examine the books, records, and
32 documents of the licensee, and may examine the licensee's officers,
33 directors, employees, or agents under oath regarding the licensee's
34 operations. The commissioner may cooperate with any agency of
35 the state or federal government, other states, agencies, the Federal
36 National Mortgage Association, or the Federal Home Loan
37 Mortgage Corporation. The commissioner may accept an
38 examination conducted by one of these entities in place of an
39 examination by the commissioner under this section, unless the
40 commissioner determines that the examination does not provide

1 information necessary to enable the commissioner to fulfill his or
2 her responsibilities under this division.

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

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

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

24 ~~10166.12.~~

25 *10166.13.* A real estate broker who acts pursuant to Section
26 10131.1 or subdivision (d) or (e) of Section 10131 and who makes,
27 arranges, or services loans secured by real property containing one
28 to four residential units shall make any special reports to the
29 commissioner that the commissioner may, from time to time,
30 require.

31 ~~10166.13.~~

32 *10166.14.* A real estate broker shall notify the department when
33 he or she is no longer subject to this part. If a broker has already
34 made reports required by Sections ~~10166.06~~ and ~~10166.07~~
35 *10166.07 and 10166.08* within the year, he or she shall continue
36 reports for that year, but shall notify the department prior to the
37 expiration of that year that he or she will no longer be subject to
38 this part in the succeeding year.

1 ~~10166.14.~~

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

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

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

16 10166.16. (a) *Except as otherwise provided in Section 1512*
17 *of the SAFE Act, the requirements under any federal or state law*
18 *regarding the privacy or confidentiality of any information or*
19 *material provided to the Nationwide Mortgage Licensing System*
20 *and Registry, and any privilege arising under federal or state law,*
21 *including the rules of any federal or state court, with respect to*
22 *that information or material, shall continue to apply to the*
23 *information or material after the information or material has been*
24 *disclosed to the Nationwide Mortgage Licensing System and*
25 *Registry. The information and material may be shared with all*
26 *state and federal regulatory officials with mortgage industry*
27 *oversight authority without the loss of privilege or the loss of*
28 *confidentiality 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*
34 *by 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 federal or state law governing the*
39 *disclosure to the public of information held by an officer or an*
40 *agency of the federal government or the 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 System*
 4 *and Registry with respect to the information or material, the person*
 5 *to whom the information or material pertains waives, in whole or*
 6 *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,*
 10 *mortgage loan originators that is included in the Nationwide*
 11 *Mortgage 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*
 32 *any other activities as the commissioner deems necessary for*
 33 *participation in the Nationwide Mortgage Licensing System and*
 34 *Registry.*

35 SEC. 5. Section 10235.5 of the Business and Professions Code
 36 is amended to read:

37 10235.5. (a) No real estate licensee or mortgage loan originator
 38 shall place an advertisement disseminated primarily in this state
 39 for a loan unless there is disclosed within the printed text of that
 40 advertisement, or the oral text in the case of a radio or television

1 advertisement, the Department of Real Estate license number and
2 the unique identifier assigned to that licensee by the Nationwide
3 Mortgage Licensing System and Registry under which the loan
4 would be made or arranged.

5 (b) “Mortgage loan ~~originator~~, *originator*,” “unique identifier,”
6 and “Nationwide Mortgage Licensing System and Registry” have
7 the meanings set forth in Section 10166.01.

8 SEC. 6. Section 10236.4 of the Business and Professions Code
9 is amended to read:

10 10236.4. (a) In compliance with Section 10235.5, every
11 licensed real estate broker shall also display his or her license
12 number on all advertisements where there is a solicitation for
13 borrowers or potential investors. Every mortgage loan originator,
14 as defined in Section 10166.01, shall also display the unique
15 identifier assigned to that individual by the Nationwide Mortgage
16 Licensing System and Registry on all advertisements where there
17 is a solicitation for borrowers.

18 (b) The disclosures required by Sections 10232.4 and 10240
19 shall include the licensee’s license number, the mortgage
20 originator’s unique identifier, if applicable, and the department’s
21 license information telephone number.

22 (c) “Mortgage loan originator,” “unique identifier,” and
23 “Nationwide Mortgage Licensing System and Registry” have the
24 meanings set forth in Section 10166.01.

25 SEC. 7. Section 22012 is added to the Financial Code, to read:

26 22012. (a) “Branch office license” means a license to engage
27 in business as a finance lender or broker at a location other than
28 the location identified in a finance lender or broker license
29 application or amended application.

30 (b) “Depository institution” has the same meaning as in Section
31 3 of the Federal Deposit Insurance Act, and includes any credit
32 union.

33 (c) “Federal banking agencies” means the Board of Governors
34 of the Federal Reserve System, the Comptroller of the Currency,
35 the Director of the Office of Thrift Supervision, the National Credit
36 Union Administration, and the Federal Deposit Insurance
37 Corporation.

38 (d) “Nationwide Mortgage Licensing System and Registry”
39 means a mortgage licensing system developed and maintained by
40 the Conference of State Bank Supervisors and the American

1 Association of Residential Mortgage Regulators for the licensing
2 and registration of licensed mortgage loan originators.

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

13 (f) “SAFE Act” means the federal Secure and Fair Enforcement
14 for Mortgage Licensing Act of 2008 (Public Law 110-289).

15 (g) “Unique identifier” means a number or other identifier
16 assigned by protocols established by the Nationwide Mortgage
17 Licensing System and Registry.

18 (h) This section shall become operative July 31, 2010.

19 SEC. 8. Section 22013 is added to the Financial Code, to read:

20 22013. (a) “Mortgage loan originator” means an individual
21 who, for compensation or gain, or in the expectation of
22 compensation or gain, takes a residential mortgage loan
23 application or offers or negotiates terms of a residential mortgage
24 loan.

25 (b) Mortgage loan originator does not include any of the
26 following:

27 (1) An individual who performs purely administrative or clerical
28 tasks on behalf of a person meeting the definition of a mortgage
29 loan originator, except as provided in subdivision (c) of Section
30 22014. The term “administrative or clerical tasks” means the
31 receipt, collection, and distribution of information common for
32 the processing or underwriting of a loan in the mortgage industry
33 and communication with a consumer to obtain information
34 necessary for the processing or underwriting of a residential
35 mortgage loan, to the extent that the communication does not
36 include offering or negotiating loan rates or terms, or counseling
37 consumers about residential mortgage loan rates or terms.

38 (2) An individual that is not compensated by a lender, other
39 mortgage loan originator, or by any agent of any lender or other
40 mortgage loan originator.

1 (3) *An individual that is solely involved in extensions of credit*
2 *relating to timeshare plans, as that term is defined in Section*
3 *101(53D) of Title 11 of the United States Code.*

4 (4) *An individual licensed as a mortgage loan originator*
5 *pursuant to the provisions of Article 2.1 (commencing with Section*
6 *10166.01) of Chapter 2 of Division 4 of the Business and*
7 *Professions Code and the SAFE Act.*

8 (c) *“Registered mortgage loan originator” means any individual*
9 *who is all of the following:*

10 (1) *Meets the definition of mortgage loan originator.*

11 (2) *Is an employee of a depository institution, a subsidiary that*
12 *is owned and controlled by a depository institution and regulated*
13 *by a federal banking agency, or an institution regulated by the*
14 *Farm Credit Administration.*

15 (3) *Is registered with, and maintains a unique identifier through,*
16 *the Nationwide Mortgage Licensing System and Registry.*

17 (d) *“Loan processor or underwriter” means an individual who*
18 *performs clerical or support duties as an employee at the direction*
19 *of, and subject to the supervision and instruction of, a mortgage*
20 *loan originator licensed by the state or a registered mortgage loan*
21 *originator.*

22 (e) *This section shall become operative July 31, 2010.*

23 SEC. 9. *Section 22014 is added to the Financial Code, to read:*

24 22014. (a) *A loan processor or underwriter who does not*
25 *represent to the public, through advertising or other means of*
26 *communicating or providing information, including the use of*
27 *business cards, stationery, brochures, signs, rate lists, or other*
28 *promotional items, that the individual can or will perform any of*
29 *the activities of a mortgage loan originator shall not be required*
30 *to be licensed as a mortgage loan originator.*

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

38 (c) *An independent contractor may not engage in the activities*
39 *of a loan processor or underwriter for a residential mortgage loan*
40 *unless the independent contractor loan processor or underwriter*

1 *obtains and maintains a mortgage loan originator license under*
2 *this division. Each independent contractor loan processor or*
3 *underwriter licensed as a mortgage loan originator shall have*
4 *and maintain a valid unique identifier issued by the Nationwide*
5 *Mortgage Licensing System and Registry.*

6 *(e) This section shall become operative July 31, 2010.*

7 *SEC. 10. Section 22057 of the Financial Code is amended to*
8 *read:*

9 22057. *(a) This division does not apply to any loan that is*
10 *made or arranged by any person licensed as a real estate broker or*
11 *as a real estate salesperson by the state and secured by a lien on*
12 *real property, or to any licensed real estate broker or licensed real*
13 *estate salesperson when making such a loan. A licensed real estate*
14 *broker or licensed real estate salesperson may make a loan secured*
15 *by a lien on real property for sale to a finance lender or arrange*
16 *for a loan secured by a lien on real property to be made by a finance*
17 *lender without obtaining a license under this division.*

18 *(b) The amendments to this section made by the act adding this*
19 *subdivision shall become operative July 31, 2010.*

20 *SEC. 11. Section 22060 of the Financial Code is amended to*
21 *read:*

22 22060. *(a) This division does not apply to a loan made or*
23 *arranged by a licensed residential mortgage lender or servicer, or*
24 *an employee thereof, when acting under the authority of that*
25 *license.*

26 *(b) The amendments to this section made by the act adding this*
27 *subdivision shall become operative July 31, 2010.*

28 *SEC. 12. Section 22100 of the Financial Code is amended to*
29 *read:*

30 22100. *(a) No person shall engage in the business of a finance*
31 *lender or broker without obtaining a license from the commissioner.*

32 *(b) A finance lender or broker shall not employ a mortgage loan*
33 *originator unless the mortgage loan originator has first obtained*
34 *a license from the commissioner under this division or Division*
35 *20 (commencing with Section 50000), or has first obtained a*
36 *license endorsement from the Commissioner of Real Estate*
37 *pursuant to Article 2.1 (commencing with Section 10166.01) of*
38 *Chapter 2 of Division 4 of the Business and Professions Code.*

39 *(c) A finance lender or broker shall not employ a mortgage loan*
40 *originator whose license has lapsed.*

1 (d) Every mortgage loan originator licensed under this division
2 shall be employed by, and subject to the supervision of, a licensed
3 finance lender or broker.

4 (e) Every mortgage loan originator licensed under this division
5 shall register with and maintain a valid unique identifier issued
6 by the Nationwide Mortgage Licensing System and Registry.

7 (f) The amendments to this section made by the act adding this
8 subdivision shall become operative July 31, 2010.

9 SEC. 13. Section 22101 of the Financial Code is amended to
10 read:

11 22101. (a) An application for a license as a finance lender or
12 broker under this division shall be in the form and contain the
13 information that the commissioner may by rule require and shall
14 be filed upon payment of the fee specified in Section 22103.

15 (b) Notwithstanding any other provision of law, an applicant
16 who does not currently hold a license as a finance lender or broker
17 under this division shall furnish with his or her application, a full
18 set of fingerprints and related information for purposes of the
19 commissioner conducting a criminal history record check. The
20 commissioner shall obtain and receive criminal history information
21 from the Department of Justice and the Federal Bureau of
22 Investigation pursuant to Section 22101.5.

23 (c) Nothing in this section shall be construed to prevent a
24 licensee from engaging in the business of a finance lender through
25 a subsidiary corporation if the subsidiary corporation is licensed
26 pursuant to this division.

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

29 ~~(e) A new application shall not be required for a change in the~~
30 ~~address of an existing location previously licensed under this~~
31 ~~division. However, the licensee shall comply with the requirements~~
32 ~~of Section 22153. On and after July 31, 2010, the commissioner~~
33 ~~may require an applicant to submit its application, or parts thereof,~~
34 ~~through the Nationwide Mortgage Licensing System and Registry.~~

35 (f) The amendments to this section made by the act adding this
36 subdivision shall become operative July 31, 2010.

37 SEC. 14. Section 22101.5 of the Financial Code is amended
38 to read:

39 22101.5. (a) (1) The commissioner shall submit to the
40 Department of Justice fingerprint images and related information

1 required by the Department of Justice of all *finance lender and*
 2 *broker* license candidates, as defined by subdivision (a) of Section
 3 22101, for purposes of obtaining information as to the existence
 4 and content of a record of state or federal convictions, state or
 5 federal arrests, and information as to the existence and content of
 6 a record of state or federal arrests for which the Department of
 7 Justice establishes that the person is free on bail or on his or her
 8 own recognizance pending trial or appeal.

9 ~~(b)~~

10 (2) When received, the Department of Justice shall forward to
 11 the Federal Bureau of Investigation requests for federal summary
 12 criminal history information received pursuant to this section. The
 13 Department of Justice shall review the information returned from
 14 the Federal Bureau of Investigation and compile and disseminate
 15 a response to the commissioner.

16 ~~(e)~~

17 (3) The Department of Justice shall provide a response to the
 18 commissioner pursuant to paragraph (1) of subdivision (p) of
 19 Section 11105 of the Penal Code.

20 ~~(d)~~

21 (4) The commissioner shall request from the Department of
 22 Justice subsequent arrest notification service, as provided pursuant
 23 to Section 11105.2 of the Penal Code, for license candidates
 24 described in ~~subdivision (a)~~ *paragraph (1)*.

25 ~~(e)~~

26 (5) The Department of Justice shall charge a fee sufficient to
 27 cover the costs of processing the requests pursuant to this section.

28 ~~(f) This section shall become operative on July 1, 2006.~~

29 ~~(b) The amendments to this section made by the act adding this~~
 30 ~~subdivision shall become operative July 31, 2010.~~

31 *SEC. 15. Section 22102 of the Financial Code is amended to*
 32 *read:*

33 22102. (a) A *finance lender or broker* licensee seeking to
 34 engage in business at a new location shall submit an application
 35 *for a branch office license* to the commissioner ~~by certified mail,~~
 36 ~~return receipt requested,~~ at least 10 days before engaging in
 37 business at a new location and pay the fee required by Section
 38 22103. *The commissioner may require an applicant seeking to*
 39 *engage in business at a new location to submit its application, or*

1 *parts thereof, through the Nationwide Mortgage Licensing System*
2 *and Registry.*

3 ~~(b) The commissioner, by regulation, shall adopt a form for the~~
4 ~~application required by this section. The application shall contain~~
5 ~~the following information:~~

6 ~~(1) The address of the new location.~~

7 ~~(2) Information on the person responsible for the lending activity~~
8 ~~at the new location.~~

9 ~~(3) Any additional information required by the commissioner.~~

10 ~~(e)~~

11 ~~(b) The licensee may engage in business at the new location 10~~
12 ~~days after the date of mailing the application to engage in business~~
13 ~~at that location submission of a branch office application.~~

14 ~~(d)~~

15 ~~(c) (1) The commissioner shall approve or deny the person~~
16 ~~responsible for the lending activity at the new location in~~
17 ~~accordance with Section 22109, and shall notify the licensee of~~
18 ~~this decision within 90 days of the date of receipt of the application.~~

19 ~~(2) If the commissioner denies the application, the licensee shall,~~
20 ~~within 10 days of the date of receipt of notification of the~~
21 ~~commissioner's denial, submit a new application to the~~
22 ~~commissioner designating a different person responsible for the~~
23 ~~lending activity at the new location. The commissioner shall~~
24 ~~approve or deny the different person as provided in paragraph (1).~~

25 ~~(e)~~

26 ~~(d) A licensee shall not engage in business at a new location in~~
27 ~~a name other than a name approved by the commissioner.~~

28 ~~(f)~~

29 ~~(e) The commissioner may adopt regulations to implement the~~
30 ~~requirements of this section.~~

31 ~~(g)~~

32 ~~(f) A branch office license to engage in business at a new~~
33 ~~location shall be issued in accordance with this section. A change~~
34 ~~of street address of a place of business designated in a license shall~~
35 ~~be made in accordance with Section 22153 and shall not constitute~~
36 ~~a new location subject to the requirements of this section.~~

37 ~~(g) The amendments to this section made by the act adding this~~
38 ~~subdivision shall become operative July 31, 2010.~~

39 *SEC. 16. Section 22103 of the Financial Code is amended to*
40 *read:*

1 22103. (a) At the time of filing the application *for a finance*
2 *lender, broker, or branch office license*, the applicant shall pay to
3 the commissioner the sum of one hundred dollars (\$100) as a fee
4 for investigating the application, plus the cost of fingerprint
5 processing and the criminal history record check under Section
6 22101.5, and two hundred dollars (\$200) as an application fee.
7 The investigation fee, including the amount for the criminal history
8 record check, and the application fee are not refundable if an
9 application is denied or withdrawn.

10 (b) *The amendments to this section made by the act adding this*
11 *subdivision shall become operative July 31, 2010.*

12 SEC. 17. *Section 22104 of the Financial Code is amended to*
13 *read:*

14 22104. (a) The applicant shall file with the application *for a*
15 *finance lender or broker license* financial statements prepared in
16 accordance with generally accepted accounting principles and
17 acceptable to the commissioner that indicate a net worth of at least
18 twenty-five thousand dollars (\$25,000). ~~A~~ *Except as provided in*
19 *subdivision (b), a licensee shall maintain a net worth of at least*
20 *twenty-five thousand dollars (\$25,000) at all times.*

21 (b) *A licensee employing one or more mortgage loan originators*
22 *shall continuously maintain a minimum net worth of at least two*
23 *hundred fifty thousand dollars (\$250,000).*

24 (c) *The commissioner may promulgate rules or regulations with*
25 *respect to the requirements for minimum net worth, as are*
26 *necessary to accomplish the purposes of this division and comply*
27 *with the SAFE Act.*

28 (d) *The amendments to this section made by the act adding this*
29 *subdivision shall become operative July 31, 2010.*

30 SEC. 18. *Section 22105.1 is added to the Financial Code, to*
31 *read:*

32 22105.1. (a) *An applicant for a mortgage loan originator*
33 *license shall apply in a form as prescribed by the commissioner.*
34 *Each form shall contain content as set forth by rule, regulation,*
35 *instruction, or procedure of the commissioner and may be changed*
36 *or updated as necessary by the commissioner in order to carry out*
37 *the purposes of this division.*

38 (b) *In connection with an application for a license as a mortgage*
39 *loan originator, the applicant shall, at a minimum, furnish to the*

1 *Nationwide Mortgage Licensing System and Registry information*
2 *concerning the applicant's identity, including the following:*

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

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

10 *(A) An independent credit report obtained from a consumer*
11 *reporting agency.*

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

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

27 *(d) The Nationwide Mortgage Licensing System and Registry*
28 *may request from the Department of Justice subsequent arrest*
29 *notification service, as provided pursuant to Section 11105.2 of*
30 *the Penal Code, for persons described in subdivision (a). If*
31 *requested by the commissioner, the Department of Justice shall*
32 *provide the same electronic response to the commissioner.*

33 *(e) The Department of Justice shall charge a fee sufficient to*
34 *cover the cost of processing the requests described in this section.*

35 *(f) This section shall become operative on July 31, 2010.*

36 *SEC. 19. Section 22105.2 is added to the Financial Code, to*
37 *read:*

38 *22105.2. (a) The commissioner is authorized to establish*
39 *relationships or contracts with the Nationwide Mortgage Licensing*
40 *System and Registry or other entities designated by the Nationwide*

1 *Mortgage Licensing System and Registry to collect and maintain*
2 *records and process transaction fees or other fees related to*
3 *licensees or other persons subject to this division.*

4 *(b) For the purpose of participating in the Nationwide Mortgage*
5 *Licensing System and Registry, the commissioner is authorized to*
6 *waive or modify, in whole or in part, by rule, regulation, or order,*
7 *any or all of the requirements of this division and to establish new*
8 *requirements as reasonably necessary to participate in the*
9 *Nationwide Mortgage Licensing System and Registry.*

10 *(c) The commissioner may use the Nationwide Mortgage*
11 *Licensing System and Registry as a channeling agent for requesting*
12 *information from, and distributing information to, the Department*
13 *of Justice or any governmental agency.*

14 *(d) The commissioner may use the Nationwide Mortgage*
15 *Licensing System and Registry as a channeling agent for requesting*
16 *and distributing information to and from any source so directed*
17 *by the commissioner.*

18 *(e) The commissioner shall establish a process where applicants*
19 *and licensees may challenge information entered into the*
20 *Nationwide Mortgage Licensing System and Registry by the*
21 *commissioner.*

22 *(f) This section shall become operative July 31, 2010.*

23 *SEC. 20. Section 22105.3 is added to the Financial Code, to*
24 *read:*

25 *22105.3. (a) Except as otherwise provided in Section 1512 of*
26 *the SAFE Act, the requirements under any federal or state law*
27 *regarding the privacy or confidentiality of any information or*
28 *material provided to the Nationwide Mortgage Licensing System*
29 *and Registry, and any privilege arising under federal or state law,*
30 *including the rules of any federal or state court, with respect to*
31 *that information or material, shall continue to apply to the*
32 *information or material after the information or material has been*
33 *disclosed to the Nationwide Mortgage Licensing System and*
34 *Registry. The information and material may be shared with all*
35 *state and federal regulatory officials with mortgage industry*
36 *oversight authority without the loss of privilege or the loss of*
37 *confidentiality protections provided by federal or state law.*

38 *(b) For these purposes, the commissioner is authorized to enter*
39 *agreements or share arrangements with other governmental*
40 *agencies, the Conference of State Bank Supervisors, the American*

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

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

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

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

16 *(3) This section shall not apply with respect to the information*
17 *or material relating to the employment history of, and publicly*
18 *adjudicated disciplinary and enforcement actions against,*
19 *mortgage loan originators that is included in the Nationwide*
20 *Mortgage Licensing System and Registry for access by the public.*

21 *(d) This section shall become operative July 31, 2010.*

22 *SEC. 21. Section 22105.4 is added to the Financial Code, to*
23 *read:*

24 *22105.4. (a) The commissioner shall regularly report*
25 *violations of this division, as well as enforcement actions and other*
26 *relevant information, to the Nationwide Mortgage Licensing System*
27 *and Registry, to the extent that information is public record.*

28 *(b) This section shall become operative July 31, 2010.*

29 *SEC. 22. Section 22106 of the Financial Code is amended to*
30 *read:*

31 *22106. (a) The finance lender or broker license shall state the*
32 *name of the licensee, and if the licensee is a partnership, the names*
33 *of its general partners, and if a corporation or an association, the*
34 *date and place of its incorporation or organization, and the address*
35 *of the licensee's principal business location. On the approval and*
36 *licensing of a location pursuant to Section 22101 or 22102, the*
37 *commissioner shall issue an original license endorsed to show the*
38 *address of the authorized location and, if applicable, the name of*
39 *the subsidiary corporation licensed to operate the location. The*

1 license shall state whether the licensee is licensed as a finance
2 lender or a broker.

3 (b) ~~An application for a license for a business location outside~~
4 ~~this state may be issued if the licensee agrees in writing in the~~
5 ~~license application to do, at the option of the applicant, one of shall~~
6 ~~constitute an agreement by the applicant to do all of the following:~~

7 (1) Make the licensee's books, accounts, papers, records, and
8 files available to the commissioner or the commissioner's
9 representatives in this state.

10 (2) Pay the reasonable expenses for travel, meals, and lodging
11 of the commissioner or the commissioner's representatives incurred
12 during any investigation or examination made at the licensee's
13 location outside this state.

14 A licensee located outside this state is not required to maintain
15 books and records regarding licensed loans separate from those
16 for other loans if the licensed loans can be readily identified.

17 (c) *The amendments to this section made by the act adding this*
18 *subdivision shall become operative July 31, 2010.*

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

21 22107. (a) Each *finance lender and broker* licensee shall pay
22 to the commissioner *through the Nationwide Mortgage Licensing*
23 *System and Registry* its pro rata share of all costs and expenses,
24 *including the costs and expenses associated with the licensing of*
25 *mortgage loan originators it employs*, reasonably incurred in the
26 administration of this division, as estimated by the commissioner,
27 for the ensuing year and any deficit actually incurred or anticipated
28 in the administration of the program in the year in which the
29 assessment is made. The pro rata share shall be the proportion that
30 a licensee's gross income bears to the aggregate gross income of
31 all licensees as shown by the annual financial reports to the
32 commissioner, for the costs and expenses remaining after the
33 amount assessed pursuant to subdivision (c).

34 (b) On or before the 30th day of ~~May~~ *November* in each year,
35 the commissioner shall notify each licensee ~~by mail~~ of the amount
36 assessed and levied against it and that amount shall be paid ~~within~~
37 ~~20 days thereafter~~ *by December 31*. If payment is not made ~~within~~
38 ~~20 days~~ *by December 31*, the commissioner shall assess and collect
39 a penalty, in addition to the assessment, of 1 percent of the

1 assessment for each month or part of a month that the payment is
2 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 ~~31st day of June~~ *January* following the day upon which payment
8 is due, the commissioner may by order summarily suspend or
9 revoke the certificate issued to the licensee. If, after an order is
10 made, a request for hearing is filed in writing within 30 days, and
11 a hearing is not held within 60 days thereafter, the order is deemed
12 rescinded as of its effective date. During any period when its
13 certificate is revoked or suspended, a *finance lender or broker*
14 *licensee and any mortgage loan originator licensee employed by*
15 *the finance lender or broker* shall not conduct business pursuant
16 to this division except as may be permitted by order of the
17 commissioner. However, the revocation, suspension, or surrender
18 of a certificate shall not affect the powers of the commissioner as
19 provided in this division.

20 (e) *The amendments to this section made by the act adding this*
21 *subdivision shall become operative July 31, 2010.*

22 *SEC. 24. Section 22109 of the Financial Code is amended to*
23 *read:*

24 22109. (a) Upon reasonable notice and opportunity to be heard,
25 the commissioner may deny the application *for a finance lender*
26 *or broker license* for any of the following reasons:

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

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

38 (3) The applicant or an officer, director, general partner, person
39 responsible for the applicant's lending activities in this state, or
40 person owning or controlling, directly or indirectly, 10 percent or

1 more of the outstanding interests or equity securities of the
2 applicant has violated any provision of this division or the rules
3 thereunder or any similar regulatory scheme of the State of
4 California or a foreign jurisdiction.

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

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

14 (d) *The amendments to this section made by the act adding this*
15 *subdivision shall become operative July 31, 2010.*

16 SEC. 25. *Section 22109.1 is added to the Financial Code, to*
17 *read:*

18 22109.1. (a) *The commissioner shall not issue a mortgage*
19 *loan originator license unless the commissioner makes, at a*
20 *minimum, the following findings:*

21 (1) *The applicant has never had a mortgage loan originator*
22 *license revoked in any governmental jurisdiction, except that a*
23 *subsequent formal vacation of a revocation shall not be deemed*
24 *a revocation.*

25 (2) *The applicant has not been convicted of, or pled guilty or*
26 *nolo contendere to, a felony in a domestic, foreign, or military*
27 *court, as follows:*

28 (A) *During the seven-year period preceding the date of the*
29 *application for licensing and registration.*

30 (B) *At any time preceding the date of application, if the felony*
31 *involved an act of fraud, dishonesty, or a breach of trust, or money*
32 *laundering.*

33 (C) *Provided that any pardon of a conviction shall not be a*
34 *conviction for purposes of this subdivision.*

35 (3) *The applicant has demonstrated such financial responsibility,*
36 *character, and general fitness as to command the confidence of*
37 *the community and to warrant a determination that the mortgage*
38 *loan originator will operate honestly, fairly, and efficiently within*
39 *the purposes of this division.*

1 (4) *The applicant has completed the prelicensing education*
2 *requirement described in Section 22109.2.*

3 (5) *The applicant has passed a written test that meets the test*
4 *requirement described in Section 22109.3.*

5 (6) *The applicant is employed by, and subject to the supervision*
6 *of, a finance lender or broker that has obtained a license from the*
7 *commissioner pursuant to this division.*

8 (b) *This section shall become operative on July 31, 2010.*

9 SEC. 26. *Section 22109.2 is added to the Financial Code, to*
10 *read:*

11 22109.2. (a) *An applicant for a mortgage loan originator*
12 *license shall complete at least 20 hours of education approved in*
13 *accordance with subdivision (b). The education shall include at*
14 *least the following:*

15 (1) *Three hours of instruction on federal law and regulations.*

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

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

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

25 (c) *Nothing in this section shall preclude any prelicensing*
26 *education course, as approved by the Nationwide Mortgage*
27 *Licensing System and Registry, that is provided by the employer*
28 *of the applicant or an entity that is affiliated with the applicant by*
29 *an agency contract, or any subsidiary or affiliate of the employer*
30 *or entity.*

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

34 (e) *The prelicensing education requirements approved by the*
35 *Nationwide Mortgage Licensing System and Registry for any state*
36 *other than California shall be accepted as credit toward completion*
37 *of prelicensing education requirements in California.*

38 (f) *An individual previously licensed under this division as a*
39 *mortgage loan originator, applying to be licensed again, shall*

1 *prove that he or she has completed all of the continuing education*
2 *requirements for the year in which the license was last held.*

3 *(g) This section shall become operative on July 31, 2010.*

4 *SEC. 27. Section 22109.3 is added to the Financial Code, to*
5 *read:*

6 *22109.3. (a) An applicant for a mortgage loan originator*
7 *license shall pass a qualified written test developed by the*
8 *Nationwide Mortgage Licensing System and Registry and*
9 *administered by a test provider approved by the Nationwide*
10 *Mortgage Licensing System and Registry.*

11 *(b) A written test shall not be treated as a qualified written test*
12 *for purposes of subdivision (a) unless the test adequately measures*
13 *the applicant's knowledge and comprehension in appropriate*
14 *subject areas, including all of the following:*

15 *(1) Ethics.*

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

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

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

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

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

32 *(e) An individual who fails the qualified written test may retake*
33 *the test up to three consecutive times, although at least 30 days*
34 *shall pass between each retesting.*

35 *(f) An applicant who fails three consecutive retests shall wait*
36 *at least six months before retesting.*

37 *(g) A licensed mortgage loan originator who fails to maintain*
38 *a valid license for a period of five years or longer shall retake the*
39 *test, not taking into account any time during which the individual*
40 *is a registered mortgage loan originator.*

1 (h) This section shall become operative on July 31, 2010.

2 SEC. 28. Section 22109.4 is added to the Financial Code, to
3 read:

4 22109.4. (a) A mortgage loan originator shall comply with
5 the requirements of this section on or before December 31 of every
6 year.

7 (b) The minimum standards for license renewal for a mortgage
8 loan originator shall include the following:

9 (1) The mortgage loan originator continues to meet the minimum
10 standards for license issuance under Section 22109.1.

11 (2) The mortgage loan originator has satisfied the annual
12 continuing education requirements described in Section 22109.5.

13 (3) The mortgage loan originator, or the finance lender or
14 broker employing the mortgage loan originator, has paid all
15 required fees for renewal of the license as provided in Section
16 22107.

17 (c) The license of a mortgage loan originator failing to satisfy
18 the minimum standards for license renewal shall expire at midnight
19 on January 31, except as provided in subdivision (h) of Section
20 22109.5. The commissioner may adopt procedures for the
21 reinstatement of expired licenses consistent with the standards
22 established by the Nationwide Mortgage Licensing System and
23 Registry.

24 (d) This section shall become operative on July 31, 2010.

25 SEC. 29. Section 22109.5 is added to the Financial Code, to
26 read:

27 22109.5. (a) A licensed mortgage loan originator shall
28 complete at least eight hours of continuing education approved in
29 accordance with subdivision (b). The continuing education shall
30 include at least the following:

31 (1) Three hours of instruction on federal law and regulations.

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

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

36 (b) For purposes of this section, continuing education courses
37 shall be reviewed and approved by the Nationwide Mortgage
38 Licensing System and Registry. Review and approval of a
39 continuing education course shall include review and approval of
40 the course provider.

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

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

10 (e) Except as provided in subdivision (i), a licensed mortgage
11 loan originator:

12 (1) May only receive credit for a continuing education course
13 in the year in which the course is taken.

14 (2) May not take the same approved course in the same or
15 successive years to meet the annual requirements for continuing
16 education.

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

22 (g) A person who has successfully completed continuing
23 education requirements approved by the Nationwide Mortgage
24 Licensing System and Registry for any state other than California
25 shall be granted credit toward completion of continuing education
26 requirements in California.

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

31 (i) A person meeting the requirements of paragraphs (1) and
32 (3) of subdivision (b) of Section 22109.4 may correct any deficiency
33 in continuing education as established by rule or regulation of the
34 commissioner.

35 (j) This section shall become operative on July 31, 2010.

36 SEC. 30. Section 22109.6 is added to the Financial Code, to
37 read:

38 22109.6. (a) In addition to any other duties imposed upon the
39 commissioner by law, the commissioner shall require mortgage
40 loan originators to be licensed and registered through the

1 *Nationwide Mortgage Licensing System and Registry. In order to*
2 *carry out this requirement, the commissioner is authorized to*
3 *participate in the Nationwide Mortgage Licensing System and*
4 *Registry. For this purpose, the commissioner may establish by*
5 *rule, regulation, or order, requirements as necessary, including,*
6 *but not limited to, the following:*

7 *(1) Background information for the following:*

8 *(A) Criminal history through fingerprint or other databases.*

9 *(B) Civil or administrative records.*

10 *(C) Credit history.*

11 *(D) Any other information as deemed necessary by the*
12 *Nationwide Mortgage Licensing System and Registry.*

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

15 *(3) The setting or resetting as necessary of renewal or reporting*
16 *dates.*

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

21 *(b) This section shall become operative on July 31, 2010.*

22 *SEC. 31. Section 22151 of the Financial Code is amended to*
23 *read:*

24 22151. (a) ~~A license~~ *finance lender license, broker license,*
25 *and the license of every mortgage loan originator employed by a*
26 *lender or finance broker, along with any currently effective order*
27 *of the commissioner approving a different name pursuant to Section*
28 *22155, shall be conspicuously posted in the place of business*
29 *authorized by the license.*

30 (b) *A license is not transferable or assignable. A license issued*
31 *to a partnership or a limited partnership is not transferred or*
32 *assigned within the meaning of this section by the death,*
33 *withdrawal, or admission of a partner, general partner, or limited*
34 *partner, unless the death, withdrawal, or admission dissolves the*
35 *partnership to which the license was issued.*

36 *(c) The amendments to this section made by the act adding this*
37 *subdivision shall become operative July 31, 2010.*

38 *SEC. 32. Section 22152 of the Financial Code is amended to*
39 *read:*

1 22152. (a) A *finance lender or broker* licensee shall maintain
2 only one place of business under a duplicate or original license
3 issued pursuant to Section 22101 or 22102. The commissioner
4 may issue more than one license to the same licensee upon
5 compliance with all the provisions of this division governing an
6 original issuance of a license.

7 (b) *The amendments to this section made by the act adding this*
8 *subdivision shall become operative July 31, 2010.*

9 SEC. 33. *Section 22153 of the Financial Code is amended to*
10 *read:*

11 22153. (a) If a *finance lender or broker* licensee ~~desires seeks~~
12 to change its place of business to a street address other than that
13 designated in its license, the licensee shall ~~give written~~ *provide*
14 notice to the commissioner ~~on a form provided by the~~
15 ~~commissioner~~ at least 10 days prior to the change. ~~The~~
16 ~~commissioner shall then provide a written approval of the change~~
17 ~~and the date of the approval.~~ *The commissioner shall notify the*
18 *licensee within 10 days if the commissioner disapproves the*
19 *change, and if the commissioner does not notify the licensee of*
20 *disapproval within 10 days, the change in address shall be deemed*
21 *approved. The commissioner may require an applicant to submit*
22 *its application to change its place of business through the*
23 *Nationwide Mortgage Licensing System and Registry.*

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

30 (c) *The amendments to this section made by the act adding this*
31 *subdivision shall become operative July 31, 2010.*

32 SEC. 34. *Section 22154 of the Financial Code is amended to*
33 *read:*

34 22154. (a) No licensee shall conduct the business of making
35 loans under this division within any office, room, or place of
36 business in which any other business is solicited or engaged in, or
37 in association or conjunction therewith, except as is authorized in
38 writing by the commissioner upon the commissioner's finding that
39 the character of the other business is such that the granting of the
40 authority would not facilitate evasions of this division or of the

1 rules and regulations made pursuant to this division. An
2 authorization once granted remains in effect until revoked by the
3 commissioner. *The commissioner may authorize the other business*
4 *through the Nationwide Mortgage Licensing System and Registry.*

5 (b) The products or services of an affiliated corporation of the
6 licensee that is a supervised financial institution, or a parent or
7 subsidiary of a supervised financial institution that is an affiliate
8 of the licensee, may be provided, offered, or sold at the licensed
9 location of the licensee without authorization by the commissioner
10 pursuant to subdivision (a) if (1) the activity is not prohibited by,
11 or in violation of, the laws applicable to the affiliate or supervised
12 financial institution, and (2) the products and services are not
13 offered and sold in a manner that restricts the ability of the
14 borrower or customer to individually select or reject a product or
15 service that is offered.

16 (c) The following definitions govern the construction of this
17 section:

18 (1) “Affiliated” or “affiliate” means the following: A corporation
19 is an affiliate of, or a corporation is affiliated with, another
20 specified corporation if it directly, or indirectly through one or
21 more intermediaries, controls, is controlled by, or is under common
22 control with, the other specified corporation.

23 (2) “Supervised financial institution” means any commercial
24 bank, industrial bank, credit card bank, trust company, savings
25 and loan association, savings bank, credit union, California finance
26 lender, residential mortgage lender or servicer, or insurer, provided
27 that the institution is subject to supervision by an official or agency
28 of this state or of the United States.

29 (d) *The amendments to this section made by the act adding this*
30 *subdivision shall become operative July 31, 2010.*

31 *SEC. 35. Section 22155 of the Financial Code is amended to*
32 *read:*

33 22155. ~~No~~ *(a) No finance lender, broker, or mortgage loan*
34 *originator licensee shall transact the business licensed or make*
35 *any loan provided for by this division under any other name or at*
36 *any other place of business than that named in the license except*
37 *pursuant to a currently effective written order of the commissioner*
38 *authorizing the other name or other place of business. The*
39 *commissioner’s order, while effective, shall be deemed to amend*
40 *the original license issued pursuant to Section ~~22106~~ 22105 or*

1 22109.1. Notwithstanding any provision of this section, a licensee
2 may make any loan and engage in any other business provided for
3 by this division, other than the business described in subdivision
4 (b) of Section 22154, at a place other than the licensed location
5 under either of the following conditions:

6 (a)

7 (1) The borrower requests, either orally or in writing, that a loan
8 be initiated or made at a location other than the licensee's licensed
9 location. The use by the licensee of a preprinted solicitation form
10 returned to the licensee by the borrower shall not constitute a
11 request by the borrower that a loan be initiated or made at a
12 location other than the licensee's licensed location.

13 (b)

14 (2) The licensee makes a solicitation or advertises for, or makes
15 an offer of, a loan displayed on "home pages" or similar methods
16 by the licensee on the Internet, the World Wide Web, or similar
17 proprietary or common carrier electronic systems, and the
18 prospective borrower may transmit information over these
19 electronic systems to the licensee in connection with the licensee's
20 offer to make a loan.

21 (b) *The amendments to this section made by the act adding this*
22 *subdivision shall become operative July 31, 2010.*

23 SEC. 36. *Section 22156 of the Financial Code is amended to*
24 *read:*

25 22156. ~~Licensees~~ (a) *Finance lender, broker, and mortgage*
26 *loan originator licensees* shall keep and use in their business,
27 books, accounts, and records which will enable the commissioner
28 to determine if the licensee is complying with the provisions of
29 this division and with the rules and regulations made by the
30 commissioner. On any loan secured by real property in which loan
31 proceeds were disbursed to an independent escrowholder, the
32 licensee shall retain records and documents as set forth by rules
33 of the commissioner adopted pursuant to Section 22150. Upon
34 request of the commissioner, licensees shall file an authorization
35 for disclosure to the commissioner of financial records of the
36 licensed business pursuant to Section 7473 of the Government
37 Code.

38 (b) *The amendments to this section made by the act adding this*
39 *subdivision shall become operative July 31, 2010.*

1 *SEC. 37. Section 22157 of the Financial Code is amended to*
2 *read:*

3 22157. ~~Licensees~~ *(a) Finance lender, broker, and mortgage*
4 *loan originator licensees shall preserve their books, accounts, and*
5 *records, including cards used in the card system, if any, for at least*
6 *three years after making the final entry on any loan recorded*
7 *therein.*

8 *(b) The amendments to this section made by the act adding this*
9 *subdivision shall become operative July 31, 2010.*

10 *SEC. 38. Section 22159 of the Financial Code is amended to*
11 *read:*

12 22159. (a) Each *finance lender and broker* licensee shall file
13 an annual report with the commissioner, on or before the 15th day
14 of March, giving the relevant information that the commissioner
15 reasonably requires concerning the business and operations
16 conducted by the licensee within the state during the preceding
17 calendar year for each licensed place of business. The individual
18 annual reports filed pursuant to this section shall be made available
19 to the public for inspection except, upon request in the annual
20 report to the commissioner, the balance sheet contained in the
21 annual report of a sole proprietor or any other nonpublicly traded
22 persons. “Nonpublicly traded person” for purposes of this section
23 means persons with securities owned by 35 or fewer individuals.
24 The report shall be made under oath and in the form prescribed by
25 the commissioner.

26 (b) A licensee shall make other special reports that may be
27 required by the commissioner.

28 (c) *The commissioner may require a licensee that employs one*
29 *or more mortgage loan originators to submit to the Nationwide*
30 *Mortgage Licensing System and Registry reports of condition,*
31 *which shall be in the form and shall contain the information as*
32 *the Nationwide Mortgage Licensing System and Registry may*
33 *require.*

34 (d) *The amendments to this section made by the act adding this*
35 *subdivision shall become operative July 31, 2010.*

36 *SEC. 39. Section 22168 of the Financial Code is amended to*
37 *read:*

38 22168. (a) The commissioner may, after appropriate notice
39 and opportunity for hearing, suspend for a period not to exceed 12
40 months or bar a person from any position of employment with a

1 licensee if the commissioner finds that the person has willfully
2 used or claimed without authority a designation or certification of
3 special education, practice, or skill that the person has not attained,
4 or willfully held out to the public a confusingly similar designation
5 or certification for the purpose of misleading the public regarding
6 his or her qualifications or experience.

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

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

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

31 (e) *The amendments to this section made by the act adding this*
32 *subdivision shall become operative July 31, 2010.*

33 *SEC. 40. Section 22169 of the Financial Code is amended to*
34 *read:*

35 22169. (a) The commissioner may, after appropriate notice
36 and opportunity for hearing, by order, censure or suspend for a
37 period not exceeding 12 months, or bar from any position of
38 employment, management, or control any finance lender, broker,
39 *mortgage loan originator*, or any other person, if the commissioner
40 finds either of the following:

1 (1) That the censure, suspension, or bar is in the public interest
2 and that the person has committed or caused a violation of this
3 division or rule or order of the commissioner, which violation was
4 either known or should have been known by the person committing
5 or causing it or has caused material damage to the finance lender,
6 *broker, or mortgage loan originator*, or to the public.

7 (2) That the person has been convicted of or pleaded nolo
8 contendere to any crime, or has been held liable in any civil action
9 by final judgment, or any administrative judgment by any public
10 agency, if that crime or civil or administrative judgment involved
11 any offense involving dishonesty, fraud, or deceit, or any other
12 offense reasonably related to the qualifications, functions, or duties
13 of a person engaged in the business in accordance with the
14 provisions of this division.

15 (b) Within 15 days from the date of a notice of intention to issue
16 an order pursuant to subdivision (a), the person may request a
17 hearing under the Administrative Procedure Act (Chapter 4.5
18 (commencing with Section 11400) of Division 3 of Title 2 of the
19 Government Code). Upon receipt of a request, the matter shall be
20 set for hearing to commence within 30 days after such receipt
21 unless the person subject to this division consents to a later date.
22 If no hearing is requested within 15 days after the mailing or
23 service of such notice and none is ordered by the commissioner,
24 the failure to request a hearing shall constitute a waiver of the right
25 to a hearing.

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

30 (d) Persons suspended or barred under this section are prohibited
31 from participating in any business activity of a finance lender,
32 *broker, or mortgage loan originator*, and from engaging in any
33 business activity on the premises where a finance lender, *broker,*
34 *or mortgage loan originator* is conducting business.

35 (e) *The amendments to this section made by the act adding this*
36 *subdivision shall become operative July 31, 2010.*

37 *SEC. 41. Section 22171 of the Financial Code is amended to*
38 *read:*

39 22171. (a) The commissioner shall apply the guidance on
40 nontraditional mortgage product risks published on November 14,

1 2006, by the Conference of State Bank Supervisors and the
2 American Association of Residential Mortgage Regulators, and
3 the Statement on Subprime Mortgage Lending published on July
4 17, 2007, by the aforementioned entities and the National
5 Association of Consumer Credit Administrators, to licensees.

6 (b) The commissioner may adopt emergency and final
7 regulations to clarify the application of this section as soon as
8 possible.

9 (c) A *finance lender or broker* licensee shall adopt and adhere
10 to policies and procedures that are reasonably intended to achieve
11 the objectives set forth in the documents described in subdivision
12 (a). *A mortgage loan originator licensee shall adhere to policies
13 and procedures developed by its employer in accordance with this
14 division and applicable federal law and regulation.*

15 (d) *The amendments to this section made by the act adding this
16 subdivision shall become operative July 31, 2010.*

17 SEC. 42. *Section 22347 is added to the Financial Code, to
18 read:*

19 22347. (a) *The unique identifier of any licensed mortgage loan
20 originator shall be clearly shown on all residential mortgage loan
21 application forms, solicitations, or advertisements, including
22 business cards or Internet Web sites, and any other documents as
23 established by rule, regulation, or order of the commissioner.*

24 (b) *This section shall become operative on July 31, 2010.*

25 SEC. 43. *Section 22700 of the Financial Code is amended to
26 read:*

27 22700. (a) ~~Licenses~~ *Finance lender and broker licenses* issued
28 under this division *shall be renewed annually upon the payment
29 of an annual assessment, and if renewed by the licensee, shall
30 remain in effect until they are surrendered, revoked, or suspended.*

31 (b) Surrender of a license becomes effective 30 days after receipt
32 of an application to surrender the license or within a shorter period
33 of time that the commissioner may determine, unless a revocation
34 or suspension proceeding is pending when the application is filed
35 or a proceeding to revoke or suspend or to impose conditions upon
36 the surrender is instituted within 30 days after the application is
37 filed. If a proceeding is pending or instituted, surrender of a license
38 becomes effective at the time and upon the conditions that the
39 commissioner determines.

1 (c) *The amendments to this section made by the act adding this*
2 *subdivision shall become operative July 31, 2010.*

3 *SEC. 44. Section 22755 is added to the Financial Code, to*
4 *read:*

5 *22755. (a) It is a violation of this division for a mortgage loan*
6 *originator to do any of the following:*

7 *(1) Directly or indirectly employ any scheme, device, or artifice*
8 *to defraud or mislead borrowers or lenders or to defraud any*
9 *person.*

10 *(2) Engage in any unfair or deceptive practice toward any*
11 *person.*

12 *(3) Obtain property by fraud or misrepresentation.*

13 *(4) Solicit or enter into a contract with a borrower that provides*
14 *in substance that the mortgage loan originator may earn a fee or*
15 *commission through best efforts to obtain a loan even though no*
16 *loan is actually obtained for the borrower.*

17 *(5) Solicit, advertise, or enter into a contract for specific interest*
18 *rates, points, or other financing terms unless the terms are actually*
19 *available at the time of soliciting, advertising, or contracting.*

20 *(6) Conduct any business covered by this division without*
21 *holding a valid license as required under this division, or assist*
22 *or aide and abet any person in the conduct of business under this*
23 *division without a valid license as required under this division.*

24 *(7) Fail to make disclosures as required by this division and*
25 *any other applicable state or federal law, including regulations*
26 *thereunder.*

27 *(8) Fail to comply with this division or rules or regulations*
28 *promulgated under this division, or fail to comply with any other*
29 *state or federal law, including the rules and regulations thereunder;*
30 *applicable to any business authorized or conducted under this*
31 *division.*

32 *(9) Make, in any manner, any false or deceptive statement or*
33 *representation including, with regard to the rates, points, or other*
34 *financing terms or conditions for a residential mortgage loan, or*
35 *engage in bait and switch advertising.*

36 *(10) Negligently make any false statement or knowingly and*
37 *willfully make any omission of material fact in connection with*
38 *any information or reports filed with a governmental agency or*
39 *the Nationwide Mortgage Licensing System and Registry or in*

1 connection with any investigation conducted by the commissioner
2 or another governmental agency.

3 (11) Make any payment, threat, or promise, directly or
4 indirectly, to any person for the purposes of influencing the
5 independent judgment of the person in connection with a residential
6 mortgage loan, or make any payment, threat, or promise, directly
7 or indirectly, to any appraiser of a property, for the purposes of
8 influencing the independent judgment of the appraiser with respect
9 to the value of the property.

10 (12) Collect, charge, attempt to collect or charge, or use or
11 propose any agreement purporting to collect or charge any fee
12 prohibited by this division.

13 (13) Cause or require a borrower to obtain property insurance
14 coverage in an amount that exceeds the replacement cost of the
15 improvements as established by the property insurer.

16 (14) Fail to truthfully account for moneys belonging to a party
17 of a residential mortgage loan transaction.

18 (b) This section shall become operative on July 31, 2010.

19 SEC. 45. Section 50002 of the Financial Code is amended to
20 read:

21 50002. (a) No person shall engage in the business of making
22 residential mortgage loans or servicing residential mortgage loans,
23 in this state, without first obtaining a license from the commissioner
24 in accordance with the requirements of Chapter 2 (commencing
25 with Section 50120) or Chapter 3 (commencing with Section
26 50130), and any rules promulgated by the commissioner under
27 this law, unless a person or transaction is excepted from a definition
28 or exempt from licensure by a provision of this law or a rule of
29 the commissioner.

30 ~~(b) An employee of a licensee or of a person exempt from~~
31 ~~licensure is not required to be licensed when acting within the~~
32 ~~scope of his or her employment and shall be exempt from any~~
33 ~~other law from which his or her employer is exempt.~~

34 (b) The following persons are exempt from subdivision (a):

35 (1) Any bank, trust company, insurance company, or industrial
36 loan company doing business under the authority of, or in
37 accordance with, a license, certificate, or charter issued by the
38 United States or any state, district, territory, or commonwealth of
39 the United States that is authorized to transact business in this
40 state.

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

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

7 (4) *A person engaged solely in business, commercial, or*
8 *agricultural mortgage lending.*

9 (5) *A wholly owned service corporation of a savings and loan*
10 *association or savings bank organized under the laws of this state*
11 *or the wholly owned service corporation of a federally chartered*
12 *savings and loan association or savings bank that is authorized*
13 *to transact business in this state.*

14 (6) *An agency or other instrumentality of the federal*
15 *government, or state or municipal government.*

16 (7) *An employee or employer pension plan making residential*
17 *mortgage loans only to its participants, or a person making those*
18 *loans only to its employees or the employees of a holding company,*
19 *or an owner who controls that person, affiliate, or subsidiary of*
20 *that person.*

21 (8) *A person acting in a fiduciary capacity conferred by the*
22 *authority of a court.*

23 (9) *A real estate broker licensed under California law, when*
24 *making, arranging, selling, or servicing a residential loan.*

25 (10) *A California finance lender or broker licensed under*
26 *Division 9 (commencing with Section 22000), when acting under*
27 *the authority of that license.*

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

32 (12) *A mortgage loan originator who has obtained a license*
33 *under Chapter 3.5 (commencing with Section 50140), provided*
34 *that the mortgage loan originator is employed by a residential*
35 *mortgage lender or servicer.*

36 (13) *A registered mortgage loan originator described in*
37 *subdivision (d).*

38 (c) *An individual, unless specifically exempted under subdivision*
39 *(d), shall not engage in the business of a mortgage loan originator*
40 *with respect to any dwelling located in this state without first*

1 *obtaining and maintaining annually a license in accordance with*
2 *the requirements of Chapter 3.5 (commencing with Section 50140)*
3 *and any rules promulgated by the commissioner under that chapter.*
4 *Each licensed mortgage loan originator shall register with and*
5 *maintain a valid unique identifier issued by the Nationwide*
6 *Mortgage Licensing System and Registry.*

7 *(d) A registered mortgage loan originator is exempt from*
8 *licensure under subdivisions (a) and (c), when he or she is*
9 *employed by a depository institution, a subsidiary of a depository*
10 *institution that is owned and controlled by a depository institution*
11 *and regulated by a federal banking agency, or an institution*
12 *regulated by the Farm Credit Administration.*

13 *(e) A loan processor or underwriter who is an independent*
14 *contractor employed by a residential mortgage lender or servicer*
15 *may not engage in the activities of a loan processor or underwriter*
16 *under this division unless the independent contractor loan*
17 *processor or underwriter obtains and maintains a license under*
18 *Section 50120.*

19 *(f) The amendments to this section made by the act adding this*
20 *subdivision shall become operative July 31, 2010.*

21 *SEC. 46. Section 50002.5 is added to the Financial Code, to*
22 *read:*

23 *50002.5. (a) A residential mortgage lender or servicer shall*
24 *not employ a mortgage loan originator unless the mortgage loan*
25 *originator has first obtained a license from the commissioner under*
26 *this division or Division 9 (commencing with Section 22000), or*
27 *has first obtained a license endorsement from the commissioner*
28 *of Real Estate pursuant to Article 2.1 (commencing with Section*
29 *10166.01) of Chapter 2 of Division 4 of the Business and*
30 *Professions Code.*

31 *(b) A residential mortgage lender or servicer shall not employ*
32 *a mortgage loan originator whose license has lapsed.*

33 *(c) Every mortgage loan originator licensed under this division*
34 *shall be employed by, and subject to the supervision of, a licensed*
35 *residential mortgage lender or servicer.*

36 *(d) Every mortgage loan originator licensed under this division*
37 *shall register with and maintain a valid unique identifier issued*
38 *by the Nationwide Mortgage Licensing System and Registry.*

39 *(e) This section shall become operative on July 31, 2010.*

1 SEC. 47. Section 50003 of the Financial Code is amended to
2 read:

3 50003. (a) “Annual audit” means a certified audit of the
4 licensee’s books, records, and systems of internal control performed
5 by an independent certified public accountant in accordance with
6 generally accepted accounting principles and generally accepted
7 auditing standards.

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

9 (c) “Buy” includes exchange, offer to buy, or solicitation to
10 buy.

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

12 (e) “Control” means the possession, directly or indirectly, of
13 the power to direct, or cause the direction of, the management and
14 policies of a licensee under this division, whether through voting
15 or through the ownership of voting power of an entity that
16 possesses voting power of the licensee, or otherwise. Control is
17 presumed to exist if a person, directly or indirectly, owns, controls,
18 or holds 10 percent or more of the voting power of a licensee or
19 of an entity that owns, controls, or holds, with power to vote, 10
20 percent or more of the voting power of a licensee. No person shall
21 be deemed to control a licensee solely by reason of his or her status
22 as an officer or director of the licensee.

23 (f) “*Depository institution*” has the same meaning as in Section
24 3 of the Federal Deposit Insurance Act, and includes any credit
25 union.

26 (f)

27 (g) “Engage in the business” means the dissemination to the
28 public, or any part of the public, by means of written, printed, or
29 electronic communication or any communication by means of
30 recorded telephone messages or spoken on radio, television, or
31 similar communications media, of any information relating to the
32 making of residential mortgage loans, the servicing of residential
33 mortgage loans, or both. “Engage in the business” also means,
34 without limitation, making residential mortgage loans or servicing
35 residential mortgage loans, or both.

36 (g) ~~“Exempt person” means any of the following:~~

37 ~~(1) Any bank, trust company, insurance company, or industrial~~
38 ~~loan company doing business under the authority of or in~~
39 ~~accordance with a license, certificate, or charter issued by the~~
40 ~~United States or any state, district, territory, or commonwealth of~~

1 ~~the United States that is authorized to transact business in this~~
2 ~~state.~~

3 ~~(2) A federally chartered savings and loan association, federal~~
4 ~~savings bank, or federal credit union that is authorized to transact~~
5 ~~business in this state.~~

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

9 ~~(4) A person engaged solely in business, commercial, or~~
10 ~~agricultural mortgage lending.~~

11 ~~(5) A wholly owned service corporation of a savings and loan~~
12 ~~association or savings bank organized under the laws of this state~~
13 ~~or the wholly owned service corporation of a federally chartered~~
14 ~~savings and loan association or savings bank that is authorized to~~
15 ~~transact business in this state.~~

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

19 ~~(7) An agency, or other instrumentality of the federal~~
20 ~~government, or state or municipal government.~~

21 ~~(8) An employee or employer pension plan making residential~~
22 ~~mortgage loans only to its participants, or a person making those~~
23 ~~loans only to its employees or the employees of a holding company,~~
24 ~~owner who controls that person, affiliate, or subsidiary of that~~
25 ~~person.~~

26 ~~(9) A person acting in a fiduciary capacity conferred by the~~
27 ~~authority of a court.~~

28 ~~(10) A real estate broker licensed under California law, when~~
29 ~~making, arranging, selling, or servicing a residential loan.~~

30 ~~(11) A California finance lender licensed under Division 9~~
31 ~~(commencing with Section 22000), when acting under the authority~~
32 ~~of that license.~~

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

37 ~~(h) “Federal banking agencies” means the Board of Governors~~
38 ~~of the Federal Reserve System, the Comptroller of the Currency,~~
39 ~~the Director of the Office of Thrift Supervision, the National Credit~~

1 *Union Administration, and the Federal Deposit Insurance*
2 *Corporation.*

3 ~~(h)~~

4 (i) “In this state” means any activity of a person relating to
5 making or servicing a residential mortgage loan that originates
6 from this state and is directed to persons outside this state, or that
7 originates from outside this state and is directed to persons inside
8 this state, or that originates inside this state and is directed to
9 persons inside this state, or that leads to the formation of a contract
10 and the offer or acceptance thereof is directed to a person in this
11 state (whether from inside or outside this state and whether the
12 offer was made inside or outside the state).

13 ~~(i)~~

14 (j) “Institutional investor” means the following:

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

23 (2) Any bank, trust company, savings bank or savings and loan
24 association, credit union, industrial bank or industrial loan
25 company, personal property broker, consumer finance lender,
26 commercial finance lender, or insurance company, or subsidiary
27 or affiliate of one of the preceding entities, doing business under
28 the authority of or in accordance with a license, certificate, or
29 charter issued by the United States or any state, district, territory,
30 or commonwealth of the United States.

31 (3) Trustees of pension, profit-sharing, or welfare funds, if the
32 pension, profit-sharing, or welfare fund has a net worth of not less
33 than fifteen million dollars (\$15,000,000), except pension,
34 profit-sharing, or welfare funds of a licensee or its affiliate,
35 self-employed individual retirement plans, or individual retirement
36 accounts.

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

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

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

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

11 (6) A ~~person~~ *residential mortgage lender or servicer* licensed
12 to make residential mortgage loans under this law or an affiliate
13 or subsidiary of that person.

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

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

30 (9) A business development company as defined in Section
31 2(a)(48) of the Investment Company Act of 1940 or a Small
32 Business Investment Company licensed by the United States Small
33 Business Administration under Section 301(c) or (d) of the Small
34 Business Investment Act of 1958.

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

37 (11) A trust or other business entity established by an
38 institutional investor for the purpose of issuing or facilitating the
39 issuance of securities representing undivided interests in, or rights
40 to receive payments from or to receive payments primarily from,

- 1 a pool of financial assets held by the trust or business entity,
2 provided that all of the following apply:
- 3 (A) The business entity is not a sole proprietorship.
 - 4 (B) The pool of assets consists of one or more of the following:
 - 5 (i) Interest-bearing obligations.
 - 6 (ii) Other contractual obligations representing the right to receive
7 payments from the assets.
 - 8 (iii) Surety bonds, insurance policies, letters of credit, or other
9 instruments providing credit enhancement for the assets.
 - 10 (C) The securities will be either one of the following:
 - 11 (i) Rated as “investment grade” by Standard and Poor’s
12 Corporation or Moody’s Investors Service, Inc. “Investment grade”
13 means that the securities will be rated by Standard and Poor’s
14 Corporation as AAA, AA, A, or BBB or by Moody’s Investors
15 Service, Inc. as Aaa, Aa, A, or Baa, including any of those ratings
16 with “+” or “—” designation or other variations that occur within
17 those ratings.
 - 18 (ii) Sold to an institutional investor.
 - 19 (D) The offer and sale of the securities is qualified under the
20 California Corporate Securities Law of 1968 or registered under
21 federal securities laws, or exempt from qualification or registration.
- 22 (j)
- 23 (k) “Institutional lender” means the following:
- 24 (1) The United States or any state, district, territory, or
25 commonwealth thereof, or any city, county, city and county, public
26 district, public authority, public corporation, public entity, or
27 political subdivision of a state, district, territory, or commonwealth
28 of the United States, or any agency or other instrumentality of any
29 one or more of the foregoing, including, by way of example, the
30 Federal National Mortgage Association and the Federal Home
31 Loan Mortgage Corporation.
 - 32 (2) Any bank, trust company, savings bank or savings and loan
33 association, credit union, industrial loan company, or insurance
34 company, or service or investment company that is wholly owned
35 and controlled by one of the preceding entities, doing business
36 under the authority of and in accordance with a license, certificate,
37 or charter issued by the United States or any state, district, territory,
38 or commonwealth of the United States.

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

4 (4) A ~~person~~ *residential mortgage lender or servicer* licensed
 5 to make residential mortgage loans under this law.

6 ~~(k)~~

7 (l) “Law” means the California Residential Mortgage Lending
 8 Act.

9 ~~(t)~~

10 (m) “Lender” means a person that (1) is an approved lender for
 11 the Federal Housing Administration, Veterans Administration,
 12 Farmers Home Administration, Government National Mortgage
 13 Association, Federal National Mortgage Association, or Federal
 14 Home Loan Mortgage Corporation, (2) directly makes residential
 15 mortgage loans, and (3) makes the credit decision in the loan
 16 transactions.

17 ~~(m)~~

18 (n) “Licensee” means, depending on the context, a person
 19 licensed under either Chapter 2 (commencing with Section 50120)
 20 or, Chapter 3 (commencing with Section 50130), or Chapter 3.5
 21 (commencing with Section 50140).

22 ~~(n)~~

23 (o) “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 ~~(o)~~

29 (p) “Mortgage loan,” “residential mortgage loan,” or “home
 30 mortgage loan” means, *when used in the provisions of this division*
 31 *applicable to residential mortgage lenders and services*, a federally
 32 regulated mortgage loan as defined in Section 3500.2 of Title 24
 33 of the Code of Federal Regulations, or a loan made to finance
 34 construction of a one to four family dwelling.

35 ~~(p)~~

36 (q) “Mortgage servicer” or “residential mortgage loan servicer”
 37 means a person that (1) is an approved servicer for the Federal
 38 Housing Administration, Veterans Administration, Farmers Home
 39 Administration, Government National Mortgage Association,
 40 Federal National Mortgage Association, or Federal Home Loan

1 Mortgage Corporation, and (2) directly services or offers to service
2 mortgage loans.

3 (r) *“Nationwide Mortgage Licensing System and Registry”*
4 *means a mortgage licensing system developed and maintained by*
5 *the Conference of State Bank Supervisors and the American*
6 *Association of Residential Mortgage Regulators for the licensing*
7 *and registration of licensed mortgage loan originators.*

8 ~~(q)~~

9 (s) “Net worth” has the meaning set forth in Section 50201.

10 ~~(r)~~

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

22 ~~(s)~~

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

28 (v) *“Residential mortgage loan” means, when used in the*
29 *provisions of this division applicable to mortgage loan originators,*
30 *any loan primarily for personal, family, or household use that is*
31 *secured by a mortgage, deed of trust, or other equivalent*
32 *consensual security interest on a dwelling, as defined in Section*
33 *103(v) of the Truth in Lending Act, or residential real estate upon*
34 *which is constructed or intended to be constructed a dwelling.*
35 *“Dwelling” means a residential structure that contains one to four*
36 *units, whether or not that structure is attached to real property.*
37 *The term includes an individual condominium unit, cooperative*
38 *unit, mobilehome, or trailer, if it is used as a residence.*

39 ~~(t)~~

1 (w) “Residential real property” or “residential real estate” means
2 real property located in this state that is improved by a one-to-four
3 family dwelling.

4 (x) “SAFE Act” means the Secure and Fair Enforcement for
5 Mortgage Licensing Act of 2008 (Public Law 110-289).

6 ~~(tt)~~
7 (y) “Service” or “servicing” means receiving more than three
8 installment payments of principal, interest, or other amounts placed
9 in escrow, pursuant to the terms of a mortgage loan and performing
10 services by a licensee relating to that receipt or the enforcement
11 of its receipt, on behalf of the holder of the note evidencing that
12 loan.

13 ~~(v)~~
14 (z) “Sell” includes exchange, offer to sell, or solicitation to sell.

15 (aa) “Unique identifier” means a number or other identifier
16 assigned by protocols established by the Nationwide Mortgage
17 Licensing System and Registry.

18 (ab) The amendments to this section made by the act adding
19 this subdivision shall become operative July 31, 2010.

20 SEC. 48. Section 50003.5 is added to the Financial Code, to
21 read:

22 50003.5. (a) “Mortgage loan originator” means an individual
23 who, for compensation or gain, or in the expectation of
24 compensation or gain, takes a residential mortgage loan
25 application or offers or negotiates terms of a residential mortgage
26 loan.

27 (b) Mortgage loan originator does not include any of the
28 following:

29 (1) An individual who performs purely administrative or clerical
30 tasks on behalf of a person meeting the definition of a mortgage
31 loan originator, except as provided in subdivision (c) of Section
32 50003.6. The term “administrative or clerical tasks” means the
33 receipt, collection, and distribution of information common for
34 the processing or underwriting of a loan in the mortgage industry
35 and communication with a consumer to obtain information
36 necessary for the processing or underwriting of a residential
37 mortgage loan, to the extent that the communication does not
38 include offering or negotiating loan rates or terms, or counseling
39 consumers about residential mortgage loan rates or terms.

1 (2) *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 (3) *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 (4) *An individual licensed as a mortgage loan originator*
8 *pursuant to Article 2.1 (commencing with Section 10166.01) of*
9 *Chapter 2 of Division 4 of the Business and Professions Code and*
10 *the SAFE Act.*

11 (c) *“Registered mortgage loan originator” means any individual*
12 *who is all of the following:*

13 (1) *Meets the definition of mortgage loan originator.*

14 (2) *Is an employee of a depository institution, a subsidiary that*
15 *is owned and controlled by a depository institution and regulated*
16 *by a federal banking agency, or an institution regulated by the*
17 *Farm Credit Administration.*

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

20 (d) *“Loan processor or underwriter” means an individual who*
21 *performs clerical or support duties as an employee at the direction*
22 *of, and subject to the supervision and instruction of, a mortgage*
23 *loan originator licensed by the state or a registered mortgage loan*
24 *originator.*

25 (e) *This section shall become operative on July 31, 2010.*

26 SEC. 49. *Section 50003.6 is added to the Financial Code, to*
27 *read:*

28 50003.6. (a) *A loan processor or underwriter who does not*
29 *represent to the public, through advertising or other means of*
30 *communicating or providing information, including the use of*
31 *business cards, stationery, brochures, signs, rate lists, or other*
32 *promotional items, that the individual can or will perform any of*
33 *the activities of a loan originator shall not be required to be*
34 *licensed as a mortgage loan originator.*

35 (b) *An individual engaging solely in loan processor or*
36 *underwriter activities shall not represent to the public, through*
37 *advertising or other means of communicating or providing*
38 *information including the use of business cards, stationery,*
39 *brochures, signs, rate lists, or other promotional items, that the*

1 *individual can or will perform any of the activities of a mortgage*
2 *loan originator.*

3 (c) *An independent contractor may not engage in the activities*
4 *of a loan processor or underwriter for a residential mortgage loan*
5 *unless the independent contractor loan processor or underwriter*
6 *obtains and maintains a mortgage loan originator license under*
7 *this division. Each independent contractor loan processor or*
8 *underwriter licensed as a mortgage loan originator shall have*
9 *and maintain a valid unique identifier issued by the Nationwide*
10 *Mortgage Licensing System and Registry.*

11 (d) *This section shall become operative on July 31, 2010.*

12 SEC. 50. *Section 50120 of the Financial Code is amended to*
13 *read:*

14 50120. (a) *A residential mortgage lender shall file an*
15 *application for licensure under this chapter with the commissioner*
16 *to make or service residential mortgage loans in this state.*

17 (b) *A licensee may not engage in the business as a residential*
18 *mortgage lender under a name other than the name that appears*
19 *on the license, or a legally assumed name disclosed either in the*
20 *application or in an amendment to the application, which shall be*
21 *reflected on the license.*

22 (c) *A licensee may not make or service residential mortgage*
23 *loans secured by real property pursuant to the authority of a license,*
24 *or an exemption from licensure, under the Real Estate Law.*

25 (d) *The commissioner may, pursuant to Section 50321, order a*
26 *licensee to cease any other business conducted at any location*
27 *where the licensee operates under the authority of a residential*
28 *mortgage lender license, if the commissioner finds that the conduct*
29 *of that business has facilitated evasions of this division or the rules*
30 *adopted pursuant to this division, or that the conduct of that*
31 *business is in violation of any law to which that business is subject.*

32 (e) *A license issued for a business location outside this state*
33 ~~*may be issued if the licensee agrees in writing, and subject to the*~~
34 ~~*sole discretion of the commissioner, to shall constitute an*~~
35 ~~*agreement by the licensee to, at the sole discretion of the*~~
36 ~~*commissioner, either (1) make the licensee's books, accounts,*~~
37 ~~*papers, records, and files available to the commissioner or the*~~
38 ~~*commissioner's representatives in this state within 10 calendar*~~
39 ~~*days of a request from the commissioner or, (2) pay the reasonable*~~
40 ~~*expenses for travel, meals, and lodging of the commissioner or the*~~

1 commissioner’s representatives incurred during an investigation
2 or examination made at the licensee’s location outside this state.

3 (f) *The commissioner may require an applicant or licensee to*
4 *make some or all filings with the commissioner through the*
5 *Nationwide Mortgage Licensing System and Registry.*

6 (g) *The amendments to this section made by the act adding this*
7 *subdivision shall become operative July 31, 2010.*

8 *SEC. 51. Section 50121 of the Financial Code is amended to*
9 *read:*

10 50121. The commissioner shall issue a *residential mortgage*
11 *lender* license upon the satisfaction of all of the following:

12 (a) ~~The filing with the commissioner of a complete and verified~~
13 ~~executed application for licensure, which may, at the discretion of~~
14 ~~the commissioner, include background and experience disclosures~~
15 ~~required by any of the uniform application forms of the Nationwide~~
16 ~~Mortgage Licensing System and Registry.~~

17 ~~(b) The filing as an exhibit to the application of a listing of~~
18 ~~material judgments filed against, and bankruptcy petitions filed~~
19 ~~by, the applicant for the preceding five years, and the disposition~~
20 ~~thereof.~~

21 (e)

22 (b) The payment of a nonrefundable investigation fee of one
23 hundred dollars (\$100), plus the cost of fingerprint processing and
24 clearance, and an application filing fee of nine hundred dollars
25 (\$900).

26 (d)

27 (c) An investigation of the statements required by Section 50124
28 based upon which the commissioner is able to issue findings that
29 the financial responsibility, criminal records (verified by
30 fingerprint, at the discretion of the commissioner), experience,
31 character, and general fitness of the applicant and of the partners
32 or members thereof, if the applicant is a partnership or association,
33 and of the principal officers and directors thereof, if the license
34 applicant is a corporation, support a finding that the business will
35 be operated honestly, fairly, and in accordance with the
36 requirements of this division.

37 (d) *The amendments to this section made by the act adding this*
38 *subdivision shall become operative July 31, 2010.*

39 *SEC. 52. Section 50122 of the Financial Code is amended to*
40 *read:*

1 50122. (a) The application for a residential mortgage lender
2 license shall be ~~in writing, executed under penalty of perjury, and~~
3 ~~verified sworn testimony~~ on a form prescribed by the commissioner,
4 *and shall include a notarized signature*. If an applicant proposes
5 to engage in business as a residential mortgage loan servicer as
6 well as a residential mortgage lender, this information shall be set
7 forth in the application. The commissioner may issue a license
8 under this chapter to engage in business as a residential mortgage
9 lender or to engage in business as a residential mortgage lender
10 and residential mortgage loan servicer. A person filing an
11 application under this chapter to engage in business as a residential
12 mortgage lender and a residential mortgage loan servicer is not
13 required to file an application under Chapter 3 (commencing with
14 Section 50130).

15 (b) The application shall contain the name and complete business
16 and residential address or addresses of the applicant. If the applicant
17 is a partnership, association, corporation, or other entity, the
18 application shall contain the names and complete business and
19 residential addresses of each member, director, and principal
20 officer. The application also shall include a description of the
21 activities of the applicant in the detail and for the periods that the
22 commissioner may require, including all of the following:

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

27 (2) A statement that the applicant or its members, directors, or
28 principals, as appropriate, are at least 18 years of age. *The statement*
29 *may be made by providing each person's date of birth*.

30 (3) Information as to the character, fitness, financial and business
31 responsibility, background, experience, and criminal convictions
32 of any of the following:

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

35 (B) Any person that controls, directly or indirectly, the election
36 of 25 percent or more of the members of the board of directors of
37 an applicant.

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

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

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

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

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

9 (c) *The amendments to this section made by the act adding this*
10 *subdivision shall become operative July 31, 2010.*

11 *SEC. 53. Section 50123 of the Financial Code is amended to*
12 *read:*

13 50123. (a) ~~A license shall~~ *residential mortgage lender license*
14 *shall be renewed annually upon the payment of the annual fee or*
15 *assessment, and if renewed, shall remain in effect until suspended,*
16 *surrendered, or revoked.*

17 (b) *A residential mortgage lender licensee that ceases to engage*
18 *in the business regulated by this division and desires to no longer*
19 *be licensed shall inform the commissioner in writing and, at that*
20 *time, surrender the license and all other indicia of licensure to the*
21 *commissioner. The licensee shall file a plan for the withdrawal*
22 *from regulated business, and the plan shall include a timetable for*
23 *the disposition of the business. The plan shall also include a closing*
24 *audit, review, or other agreed upon procedures performed by an*
25 *independent certified public accountant prescribed by rule or order*
26 *of the commissioner. Upon receipt of the written notice and plan,*
27 *the commissioner shall review the plan and, if satisfactory to the*
28 *commissioner, shall accept the surrender of the license. A license*
29 *is not surrendered until its tender is accepted in writing by the*
30 *commissioner after a review, and a finding has been made on the*
31 *licensee's plan required to be filed by this section, and a*
32 *determination has been made that there is no violation of this law.*

33 (c) *A residential mortgage lender or servicer licensee may not*
34 *surrender its license under this division and, under the authority*
35 *of a real estate license, subsequently engage in residential mortgage*
36 *lending or servicing activities that are subject to this division,*
37 *unless the licensee has been licensed under this division for a*
38 *period of five years or more.*

39 (d) *The commissioner may, in his or her discretion, require a*
40 *residential mortgage lender licensee whose license has expired to*

1 *comply with the requirements for the surrender of a license in this*
2 *section.*

3 *(e) The amendments to this section made by the act adding this*
4 *subdivision shall become operative July 31, 2010.*

5 *SEC. 54. Section 50124 of the Financial Code is amended to*
6 *read:*

7 50124. (a) ~~A license application must be accompanied by an~~
8 ~~exhibit containing statements that the applicant agrees to do~~
9 *residential mortgage lender shall do all of the following:*

10 (1) ~~To maintain~~ *Maintain* staff adequate to meet the
11 requirements of this division, as prescribed by rule or order of the
12 commissioner.

13 (2) ~~To keep~~ *Keep* and maintain for 36 months from the date of
14 final entry the business records and other information required by
15 law or rules of the commissioner regarding any mortgage loan
16 made or serviced in the course of the conduct of its business.

17 (3) ~~To file~~ *File* with the commissioner any report required under
18 law or by rule or order of the commissioner.

19 (4) ~~To disburse~~ *Disburse* funds in accordance with its
20 agreements and to make a good faith and reasonable effort to effect
21 closing in a timely manner.

22 (5) ~~To account~~ *Account* or deliver to a person any personal
23 property such as money, funds, deposit, check, draft, mortgage,
24 other document, or thing of value, that has come into its possession
25 and is not its property, or that it is not in law or equity entitled to
26 retain under the circumstances, at the time that has been agreed
27 upon or is required by law, or, in the absence of a fixed time, upon
28 demand of the person entitled to the accounting or delivery.

29 (6) ~~To file~~ *File* with the commissioner an amendment to its
30 application prior to any material change in the information
31 contained in the application for licensure, including, without
32 limitation, the plan of operation. The commissioner shall, within
33 20 business days of receiving a completed amendment to the
34 application, or within a longer time if agreed to by the licensee,
35 ~~issue an order approving or disapproving~~ *approve or disapprove*
36 the effectiveness of the proposed amendment.

37 (7) ~~To comply~~ *Comply* with the provisions of this division, and
38 with any order or rule of the commissioner.

39 (8) ~~To submit~~ *Submit* to periodic examination by the
40 commissioner as required by this division.

1 (9) ~~To advise~~ *Advise* the commissioner by amendment to its
2 application of any material judgment filed against, or bankruptcy
3 petition filed by, the licensee within five days of the filing.

4 (10) ~~To notify~~ *Notify* the commissioner, in writing, ~~by certified~~
5 ~~mail, return receipt requested,~~ prior to opening a branch office in
6 this state or changing ~~the~~ *its* business location or locations ~~of the~~
7 ~~applicant or the~~ *its* branch offices ~~of the applicant~~ from which
8 activities subject to this division are conducted.

9 ~~(b) The exhibit also shall contain a space for the applicant to~~
10 ~~attest that the applicant:~~

11 ~~(1) Has complied~~

12 ~~(11) Comply~~ with all applicable state and federal tax return filing
13 requirements ~~for the past three years or has filed with the~~
14 ~~commissioner an accountant's or attorney's statement as to why~~
15 ~~no return was filed.~~

16 ~~(2) Has not committed~~

17 ~~(12) Refrain from committing~~ a crime against the laws of any
18 state or the United States, involving moral turpitude,
19 misrepresentation, fraudulent or dishonest dealing, or fraud, and
20 ~~has disclosed~~ *disclose* to the commissioner any final judgment
21 entered against it in a civil action upon grounds or allegations of
22 fraud, misrepresentation, or deceit.

23 ~~(3) Has not engaged~~

24 ~~(13) Refrain from engaging~~ in conduct that would be cause for
25 denial of a license.

26 ~~(4) Is not insolvent.~~

27 ~~(14) Remain solvent.~~

28 ~~(5) Has acted~~

29 ~~(15) Proceed~~ with due care and competence in performing any
30 act for which it is required to hold a license under this division.

31 ~~(6) Any other matter as required~~

32 ~~(16) Comply with any other requirement established by rule of~~
33 ~~the commissioner.~~

34 ~~(b) The commissioner may require an applicant to submit a~~
35 ~~statement agreeing to comply with the requirements of this section.~~

36 ~~(c) The amendments to this section made by the act adding this~~
37 ~~subdivision shall become operative July 31, 2010.~~

38 *SEC. 55. Section 50125 of the Financial Code is amended to*
39 *read:*

1 50125. (a) The commissioner may refuse to issue a *residential*
2 *mortgage lender* license if any of the following apply:

3 ~~(a)~~

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

6 ~~(b)~~

7 (2) The commissioner cannot make the findings specified in
8 subdivision (d) of Section 50121.

9 ~~(c)~~

10 (3) A material requirement for issuance of a license has not been
11 met.

12 (b) *The amendments to this section made by the act adding this*
13 *subdivision shall become operative July 31, 2010.*

14 *SEC. 56. Section 50126 of the Financial Code is amended to*
15 *read:*

16 50126. (a) Upon reasonable notice and opportunity to be heard,
17 the commissioner may deny an application for any of the following
18 reasons:

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

21 (2) Any officer, director, general partner, or person owning or
22 controlling, directly or indirectly, 10 percent or more of the
23 outstanding interests or equity securities of the applicant has, within
24 the last 10 years, (A) been convicted of, or pleaded nolo contendere
25 to, a crime or (B) committed any act involving dishonesty, fraud,
26 or deceit, if the crime or act is substantially related to the
27 qualifications, functions, or duties of a person engaged in business
28 in accordance with this division.

29 (3) The applicant or any officer, director, general partner, or
30 person owning or controlling, directly or indirectly, 10 percent or
31 more of the outstanding interests or equity securities of the
32 applicant, has violated any provision of this division or the rules
33 thereunder or any similar regulatory scheme of the State of
34 California or a foreign jurisdiction.

35 (b) The application shall be considered withdrawn within the
36 meaning of this section if the applicant fails to respond to a written
37 notification of a deficiency in the application within 90 days of
38 the date of the notification.

39 (c) The commissioner shall, within 60 days from the filing of
40 a full and complete application for a license, including the receipt

1 of background and investigative reports from the Department of
2 Justice or other government agencies, and the payment of the fees
3 required by Section 50121, issue either a *residential mortgage*
4 *lender* license or a statement of issues prepared in accordance with
5 Chapter 5 (commencing with Section 11500) of Part 1 of Division
6 3 of Title 2 of the Government Code.

7 *(d) The amendments to this section made by the act adding this*
8 *subdivision shall become operative July 31, 2010.*

9 *SEC. 57. Section 50127 of the Financial Code is amended to*
10 *read:*

11 50127. *(a) The proceedings for a denial of a residential*
12 *mortgage lender license shall be conducted in accordance with*
13 *Chapter 5 (commencing with Section 11500) of Part 1 of Division*
14 *3 of Title 2 of the Government Code, and the commissioner has*
15 *all the powers granted therein.*

16 *(b) The amendments to this section made by the act adding this*
17 *subdivision shall become operative July 31, 2010.*

18 *SEC. 58. Section 50128 of the Financial Code is amended to*
19 *read:*

20 50128. *(a) As used in this act, the term “principal officer”*
21 *means an officer with direct responsibility for the conduct of the*
22 *residential mortgage lender licensee’s or license applicant’s*
23 *lending or servicing activities in this state.*

24 *(b) The amendments to this section made by the act adding this*
25 *subdivision shall become operative July 31, 2010.*

26 *SEC. 59. Section 50129 of the Financial Code is amended to*
27 *read:*

28 50129. *(a) A residential mortgage lender licensed under this*
29 *chapter may, under the authority of that license and subject to the*
30 *provisions of this division, do both of the following:*

31 (1) Engage as a principal in the business of buying from or
32 selling to institutional investors residential mortgage loans by using
33 or advancing one’s own funds.

34 (2) Engage, pursuant to a written agency contract with an
35 institutional lender specified in paragraph (1), (2) or (4) of
36 subdivision ~~(j)~~ (k) of Section 50003, in the business of soliciting,
37 processing applications, or applying residential loan underwriting
38 criteria, but not engage in the business of brokerage services
39 pursuant to this subdivision, for residential mortgage loans for that
40 lender, using or advancing the funds of that lender, provided that

1 no fees or charges may be demanded or collected by the *residential*
2 *mortgage lender* licensee for any performance or service, except
3 fees demanded by, or collected on behalf of, the *institutional*
4 lender, and that the licensee gives a written disclosure to the
5 borrower, as soon as practicable but prior to loan closing,
6 identifying the licensee and stating that the licensee is not the
7 lender in the transaction but has contracted to provide soliciting,
8 processing, or underwriting services for the lender. Separate
9 schedules of the number and principal amount of the loans
10 processed and underwritten shall be included in the licensee's
11 annual report required by subdivision (a) of Section 50401.

12 (b) The act of soliciting other institutional lenders with whom
13 a *residential mortgage lender* licensee has concluded an agency
14 contract pursuant to paragraph (2) of subdivision (a) for placement
15 of a loan upon declination of that loan by another institutional
16 lender contracted under paragraph (2) of subdivision (a), constitutes
17 brokerage services, and may be pursued by the licensee only
18 following execution of a loan brokerage agreement with the
19 borrower as provided in this division.

20 (c) *The amendments to this section made by the act adding this*
21 *subdivision shall become operative July 31, 2010.*

22 *SEC. 60. Section 50130 of the Financial Code is amended to*
23 *read:*

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

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

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

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

36 (3) Submitting ~~the statements~~ *any information* required by
37 Section 50124.

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

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

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

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

23 (f) The commissioner shall license a mortgage servicer upon
24 completion of the investigation and issuance of the findings
25 required by Section 50121, subject to Sections 50123, 50125,
26 50126, and 50127.

27 (g) A mortgage servicer licensed to service mortgage loans shall
28 comply with all applicable requirements of California and federal
29 law, including the Civil Code and Section 2609 of the Real Estate
30 Settlement Procedures Act of 1974, as amended (12 U.S.C.A. Sec.
31 2601 et seq.).

32 (h) ~~A~~ *If renewed through the payment of the annual assessment*
33 *or fee, a license shall remain in effect until suspended, surrendered,*
34 *or revoked.*

35 (i) *The commissioner may require an applicant or licensee to*
36 *make some or all filings with the commissioner through the*
37 *Nationwide Mortgage Licensing System and Registry.*

38 (j) *The amendments to this section made by the act adding this*
39 *subdivision shall become operative July 31, 2010.*

1 *SEC. 61. Chapter 3.5 (commencing with Section 50140) is*
2 *added to Division 20 of the Financial Code, to read:*

3

4

CHAPTER 3.5. MORTGAGE LOAN ORIGINATORS

5

6 50140. (a) *Applicants for a mortgage loan originator license*
7 *shall apply in a form as prescribed by the commissioner. Each*
8 *form shall contain content as set forth by rule, regulation,*
9 *instruction, or procedure of the commissioner and may be changed*
10 *or updated as necessary by the commissioner in order to carry out*
11 *the purposes of this division.*

12 (b) *In connection with an application for a license as a mortgage*
13 *loan originator, the applicant shall, at a minimum, furnish to the*
14 *Nationwide Mortgage Licensing System and Registry information*
15 *concerning the applicant's identity, including the following:*

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

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

23 (A) *An independent credit report obtained from a consumer*
24 *reporting agency.*

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

27 (c) *If the Nationwide Mortgage Licensing System and Registry*
28 *electronically submits fingerprint images and related information,*
29 *as required by the Department of Justice, for an applicant for a*
30 *mortgage loan originator license, for the purposes of obtaining*
31 *information as to the existence and content of a record of state*
32 *convictions and state arrests and to the existence and content of*
33 *a record of state arrests for which the Department of Justice*
34 *establishes that the person is free on bail or on his or her*
35 *recognizance pending trial or appeal, the Department of Justice*
36 *shall provide an electronic response to the Nationwide Mortgage*
37 *Licensing System and Registry pursuant to paragraph (1) of*
38 *subdivision (p) of Section 11105 of the Penal Code, and shall*
39 *provide the same electronic response to the commissioner.*

1 (d) *The Nationwide Mortgage Licensing System and Registry*
2 *may request from the Department of Justice subsequent arrest*
3 *notification service, as provided pursuant to Section 11105.2 of*
4 *the Penal Code, for persons described in subdivision (a). If*
5 *requested by the commissioner, the Department of Justice shall*
6 *provide the same electronic response to the commissioner.*

7 (e) *The Department of Justice shall charge a fee sufficient to*
8 *cover the cost of processing the requests described in this section.*

9 50141. *The commissioner shall not issue a mortgage loan*
10 *originator license unless the commissioner makes at a minimum*
11 *the following findings:*

12 (a) *The applicant has never had a mortgage loan originator*
13 *license revoked in any governmental jurisdiction, except that a*
14 *subsequent formal vacation or set aside of such revocation shall*
15 *not be deemed a revocation.*

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

24 (c) *The applicant has demonstrated such financial responsibility,*
25 *character, and general fitness as to command the confidence of*
26 *the community and to warrant a determination that the mortgage*
27 *loan originator will operate honestly, fairly, and efficiently within*
28 *the purposes of this division.*

29 (d) *The applicant has completed the prelicensing education*
30 *requirement described in Section 50142.*

31 (e) *The applicant has passed a written test that meets the test*
32 *requirements described in Section 50143.*

33 (f) *The applicant is employed by, and subject to the supervision*
34 *of, a residential mortgage lender or servicer that has obtained a*
35 *license from the commissioner pursuant to this division.*

36 50142. (a) *An applicant for a mortgage loan originator license*
37 *shall complete at least 20 hours of education approved in*
38 *accordance with subdivision (b). The education shall include at*
39 *least the following:*

40 (1) *Three hours of instruction on federal law and regulations.*

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

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

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

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

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

19 (e) The prelicensing education requirements approved by the
20 Nationwide Mortgage Licensing System and Registry for any state
21 other than California shall be accepted as credit toward completion
22 of prelicensing education requirements in California.

23 (f) An individual previously licensed under this chapter applying
24 to be licensed again must prove that he or she has completed all
25 of the continuing education requirements for the year in which
26 that individual last held the license.

27 50143. (a) An applicant for a mortgage loan originator license
28 shall pass a qualified written test developed by the Nationwide
29 Mortgage Licensing System and Registry and administered by a
30 test provider approved by the Nationwide Mortgage Licensing
31 System and Registry.

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

36 (1) Ethics.

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

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

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

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

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

14 (2) An individual who fails the qualified written test may retake
15 the test up three consecutive times, although at least 30 days shall
16 pass between each retesting.

17 (3) An applicant who fails three consecutive retests shall wait
18 at least six months before retesting.

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

23 50144. (a) A mortgage loan originator shall comply with the
24 requirements of this section on or before December 31 of every
25 year.

26 (b) The minimum standards for license renewal for mortgage
27 loan originators shall include the following:

28 (1) The mortgage loan originator continues to meet the minimum
29 standards for license issuance under Section 50141.

30 (2) The mortgage loan originator has satisfied the annual
31 continuing education requirements described in Section 50145.

32 (3) The mortgage loan originator, or the residential mortgage
33 lender or servicer employing the mortgage loan originator, has
34 paid all required fees for renewal of the license.

35 (4) The license of a mortgage loan originator failing to satisfy
36 the minimum standards for license renewal shall expire at midnight
37 on January 31, except as provided in Section 50145. The
38 commissioner may adopt procedures for the reinstatement of
39 expired licenses consistent with the standards established by the
40 Nationwide Mortgage Licensing System and Registry.

1 50145. (a) A licensed mortgage loan originator shall complete
2 at least eight hours of continuing education approved in
3 accordance with subdivision (b). The continuing education shall
4 include at least the following:

5 (1) Three hours of instruction on federal law and regulations.

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

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

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

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

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

24 (e) Except as provided in subdivision (i), a licensed mortgage
25 loan originator:

26 (1) May only receive credit for a continuing education course
27 in the year in which the course is taken.

28 (2) May not take the same approved course in the same or
29 successive years to meet the annual requirements for continuing
30 education.

31 (f) A licensed mortgage loan originator who is an approved
32 instructor of an approved continuing education course may receive
33 credit for the licensed mortgage loan originator's own annual
34 continuing education requirement at the rate of two hours credit
35 for every one hour taught.

36 (g) A person who has successfully completed continuing
37 education requirements approved by the Nationwide Mortgage
38 Licensing System and Registry for any state other than California
39 shall be granted credit toward completion of continuing education
40 requirements in California.

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

5 (i) A person meeting the requirements of paragraphs (1) and
6 (3) of subdivision (b) of Section 50144 may correct any deficiency
7 in continuing education as established by rule or regulation of the
8 commissioner.

9 50146. In addition to any other duties imposed upon the
10 commissioner by law, the commissioner shall require mortgage
11 loan originators to be licensed and registered through the
12 Nationwide Mortgage Licensing System and Registry. In order to
13 carry out this requirement the commissioner is authorized to
14 participate in the Nationwide Mortgage Licensing System and
15 Registry. For this purpose, the commissioner may establish by
16 rule, regulation, or order, requirements as necessary, including,
17 but not limited to, the following:

18 (a) Background checks for:

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

20 (2) Civil or administrative records.

21 (3) Credit history.

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

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

26 (c) The setting or resetting as necessary of renewal or reporting
27 dates.

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

32 50147. This chapter shall become operative on July 31, 2010.

33 SEC. 62. Chapter 3.6 (commencing with Section 50150) is
34 added to Division 20 of the Financial Code, to read:

35

36 CHAPTER 3.6. NATIONWIDE MORTGAGE LICENSING SYSTEM
37 AND REGISTRY

38

39 50150. (a) The commissioner is authorized to establish
40 relationships or contracts with the Nationwide Mortgage Licensing

1 *System and Registry or other entities designated by the Nationwide*
2 *Mortgage Licensing System and Registry to collect and maintain*
3 *records and process transaction fees or other fees related to*
4 *licensees or other persons subject to this division.*

5 *(b) For the purpose of participating in the Nationwide Mortgage*
6 *Licensing System and Registry, the commissioner is authorized to*
7 *waive or modify, in whole or in part, by rule, regulation, or order,*
8 *any or all of the requirements of this division and to establish new*
9 *requirements as reasonably necessary to participate in the*
10 *Nationwide Mortgage Licensing System and Registry.*

11 *(c) The commissioner may use the Nationwide Mortgage*
12 *Licensing System and Registry as a channeling agent for requesting*
13 *information from, and distributing information to, the Department*
14 *of Justice or any governmental agency.*

15 *(d) The commissioner may use the Nationwide Mortgage*
16 *Licensing System and Registry as a channeling agent for requesting*
17 *and distributing information to and from any source so directed*
18 *by the commissioner.*

19 *(e) The commissioner shall establish a process where applicants*
20 *and licensees may challenge information entered into the*
21 *Nationwide Mortgage Licensing System and Registry by the*
22 *commissioner.*

23 *50151. (a) Except as otherwise provided in Section 1512 of*
24 *the SAFE Act, the requirements under any federal law or the*
25 *Information Practices Act (Chapter 1 (commencing with Section*
26 *1798) of Part 4 of Division 3 of the Civil Code) regarding the*
27 *privacy or confidentiality of any information or material provided*
28 *to the Nationwide Mortgage Licensing System and Registry, and*
29 *any privilege arising under federal or state law, including the rules*
30 *of any federal or state court, with respect to that information or*
31 *material, shall continue to apply to the information or material*
32 *after the information or material has been disclosed to the*
33 *Nationwide Mortgage Licensing System and Registry. The*
34 *information and material may be shared with all state and federal*
35 *regulatory officials with mortgage industry oversight authority*
36 *without the loss of privilege or the loss of confidentiality*
37 *protections provided by federal law or the Information Practices*
38 *Act.*

1 (b) Information or material that is subject to a privilege or
2 confidentiality under subdivision (a) shall not be subject to the
3 following:

4 (1) Disclosure under any federal or state law governing the
5 disclosure to the public of information held by an officer or an
6 agency of the federal government or the state.

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

13 (c) This section shall not apply with respect to the information
14 or material relating to the employment history of, and publicly
15 adjudicated disciplinary and enforcement actions against,
16 mortgage loan originators that is included in the Nationwide
17 Mortgage Licensing System and Registry for access by the public.

18 50152. The commissioner shall report regularly violations of
19 this division, as well as enforcement actions and other relevant
20 information, to the Nationwide Mortgage Licensing System and
21 Registry, to the extent that information is public record.

22 50153. This chapter shall become operative on July 31, 2010.

23 SEC. 63. Section 50200 of the Financial Code is amended to
24 read:

25 50200. (a) At the end of the licensee's fiscal year, but in no
26 case more than 12 months after the last audit conducted pursuant
27 to this section, each licensed residential mortgage licensee lender
28 or servicer shall cause its books and accounts to be audited by an
29 independent certified public accountant. Beginning with all audits
30 of business conducted after December 31, 1995, the audit shall be
31 sufficiently comprehensive in scope to permit the expression of
32 an opinion on the financial statements prepared in accordance with
33 generally accepted accounting principles and shall be performed
34 in accordance with generally accepted auditing standards. The
35 audit shall include a reconciliation of the licensee's trust accounts
36 as of the audit date.

37 (b) "Expression of an opinion" includes (1) an unqualified
38 opinion, (2) a qualified opinion, (3) a disclaimer of opinion, or (4)
39 an adverse opinion. If a financial statement, report, certificate, or
40 opinion of the independent certified public accountant is in any

1 way qualified, the commissioner may require the licensee to take
2 any action that the commissioner deems appropriate to address the
3 qualification. The commissioner may reject any financial statement,
4 report, certificate, or opinion by notifying the licensee or other
5 person required to make the filing of the rejection and the reason
6 therefor. Within 30 days after the receipt of the notice, the licensee
7 or other person shall correct the deficiencies. Failure to correct the
8 deficiencies is a violation of this division. The commissioner shall
9 retain a copy of all financial statements, reports, certificates, or
10 opinions so rejected.

11 (c) If a qualified or adverse opinion is expressed or if an opinion
12 is disclaimed, the reasons therefor must be fully explained.

13 (d) The audit report shall be filed with the commissioner within
14 105 days of the end of the licensee's fiscal year. The report filed
15 with the commissioner shall be certified by the certified public
16 accountant conducting the audit. The commissioner may
17 promulgate rules regarding late audit reports.

18 (e) If a licensee required to make an audit fails to cause an audit
19 to be made, the commissioner may cause the audit to be made by
20 an independent certified public accountant at the licensee's
21 expense. The commissioner shall select the independent certified
22 public accountant by advertising for bids or by other fair and
23 impartial means that the commissioner establishes by rule. The
24 commissioner may summarily revoke the license of a licensee who
25 fails to file a certified financial statement prepared by an
26 independent certified public accountant as required by this division
27 or at the request of the commissioner.

28 (f) Audits conducted in accordance with the uniform single audit
29 procedures of the United States Department of Housing and Urban
30 Development may be submitted in fulfillment of the requirements
31 of this section.

32 (g) *The amendments to this section made by the act adding this*
33 *subdivision shall become operative July 31, 2010.*

34 *SEC. 64. Section 50201 of the Financial Code is amended to*
35 *read:*

36 50201. (a) A licensee issued a license for purposes of making
37 or servicing residential mortgage loans ~~shall, including a licensee~~
38 *employing one or more mortgage loan originators, shall*
39 *continuously* maintain a minimum tangible net worth at all times
40 of two hundred fifty thousand dollars (\$250,000).

1 (b) Tangible net worth shall be computed in accordance with
2 generally accepted accounting principles.

3 (c) *The commissioner may promulgate rules or regulations with*
4 *respect to the requirements for minimum net worth, as are*
5 *necessary to accomplish the purposes of this division and comply*
6 *with the SAFE Act.*

7 (d) *The amendments to this section made by the act adding this*
8 *subdivision shall become operative July 31, 2010.*

9 *SEC. 65. Section 50202 of the Financial Code is amended to*
10 *read:*

11 50202. (a) Escrow funds for a purpose authorized by the
12 residential mortgage loan contract (1) shall be subject to and satisfy
13 all applicable state and federal requirements, including Section
14 2609 of the Real Estate Settlement Procedures Act of 1974, as
15 amended (~~12 U.S.C.A.~~ *U.S.C. Sec. 2601 et seq.*) and all applicable
16 provisions of the Civil Code, (2) shall be maintained in a depository
17 institution as described in subdivision (b), and (3) may not be
18 commingled with a licensee's funds.

19 (b) Except as provided in subdivision (f), a trust account shall
20 be placed in a non-interest-bearing account in a federally insured
21 depository institution, a federal home loan bank, a federal reserve
22 bank, or other similar government-sponsored enterprise, to be
23 removed and used only for the following:

24 (1) Payments authorized by the borrower, allowed by the
25 mortgage loan contract, or required by federal or state law.

26 (2) Refunds to the borrower.

27 (3) Transfer to another institution that is described in this
28 subdivision ~~(b)~~.

29 (4) Forwarding to the appropriate servicer in case of a transfer
30 of servicing.

31 (5) Any other purpose authorized by the residential mortgage
32 loan contract.

33 (6) Compliance with a regulatory or court order.

34 (c) As used in this section, "trust funds" means funds collected
35 by a licensee in connection with the making or servicing of a
36 residential mortgage loan that the licensee holds on behalf of
37 another.

38 (d) Notwithstanding any other provision of law, but subject to
39 the limitations of Section 854, benefits accruing from the placement
40 in a non-interest-bearing account of a commercial bank (including

1 a national banking association) of funds received by a licensee
2 who services mortgage loans under this law, shall inure to the
3 licensee, unless otherwise agreed in writing by the licensee and
4 the investor on whose behalf the licensee services the loan. A
5 borrower shall receive at least 2 percent simple interest per annum
6 on impound account payments covered by Section 2954.8 of the
7 Civil Code.

8 (e) Trust funds are not subject to the enforcement of a money
9 judgment arising out of a claim against the licensee or person
10 acting as the servicing agent, and in no instance shall the trust
11 funds be considered or treated as an asset of the licensee or person
12 performing the functions of a residential mortgage lender or loan
13 servicer.

14 (f) A licensee may, at the request of the owner of the trust funds,
15 transfer the funds initially deposited in a non-interest-bearing trust
16 account into an interest-bearing account in a federally insured
17 depository institution if all of the following requirements are met:

18 (1) The account is in the name of the *residential mortgage lender*
19 licensee in trust for the specified beneficiary.

20 (2) All of the funds in the account are federally insured.

21 (3) The funds in the account are kept separate and distinct from
22 the funds of the licensee or funds of any other person for whom
23 the licensee holds funds in trust.

24 (4) The licensee discloses to the person from whom the funds
25 are received and the beneficiary of the account how interest will
26 be calculated and paid, whether service charges will be paid to the
27 depository and by whom, and possible notice requirements or
28 penalties for withdrawal of funds from the account.

29 (5) All interest earned on the account will be paid to the owner
30 of the trust funds or the beneficiary.

31 (g) *The amendments to this section made by the act adding this*
32 *subdivision shall become operative July 31, 2010.*

33 *SEC. 66. Section 50205 of the Financial Code is amended to*
34 *read:*

35 50205. (a) A *residential mortgage lender or servicer* licensee
36 shall maintain a surety bond in accordance with this subdivision.
37 The bond shall be used for the recovery of expenses, fines, and
38 fees levied by the commissioner in accordance with this division
39 or for losses or damages incurred by borrowers or consumers as
40 the result of a licensee's noncompliance with the requirements of

1 this division. The bond shall be payable when the licensee fails to
2 comply with a provision of this division and shall be in the amount
3 of fifty thousand dollars (\$50,000), and may be increased by order
4 of the commissioner to one hundred thousand dollars (\$100,000)
5 upon a determination by the commissioner that the licensee is not
6 in compliance with any provision of this chapter or any rule or
7 order adopted or issued by the commissioner to implement or
8 enforce provisions of this chapter. The bond shall be payable to
9 the commissioner and issued by an insurance company authorized
10 to do business in this state. An original surety bond, including any
11 and all riders and endorsements executed subsequent to the
12 effective date of the bond, shall be filed with the commissioner
13 within 10 days of its execution.

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

21 (c) *The amendments to this section made by the act adding this*
22 *subdivision shall become operative July 31, 2010.*

23 *SEC. 67. Section 50206 of the Financial Code is amended to*
24 *read:*

25 50206. (a) Prior to a change of control of the business of a
26 licensee, the person wishing to acquire control shall submit a
27 ~~written~~ *an* application to the commissioner and pay an investigation
28 fee of one hundred dollars (\$100). The application shall contain
29 the information that the commissioner, by rule, may prescribe as
30 necessary to determine that the person meets the requirements of
31 Section 50121.

32 (b) The commissioner shall approve or disapprove the proposed
33 change of control of a licensee in accordance with the provisions
34 of Section 50126.

35 (c) Upon notification by the commissioner that the change of
36 control has been disapproved, the acquiring party shall immediately
37 cease any activity subject to regulation under this division.

38 (d) *The amendments to this section made by the act adding this*
39 *subdivision shall become operative July 31, 2010.*

1 *SEC. 68. Section 50208 of the Financial Code is amended to*
2 *read:*

3 50208. (a) The license shall state the name of the licensee. If
4 the licensee is a partnership, the license shall state the names of
5 its general partners. If the licensee is a corporation or an
6 association, the license shall state the date and place of the
7 corporation's incorporation or organization ~~and~~. *If the licensee is*
8 *a residential mortgage lender or servicer, the license shall state*
9 the address of the licensee's principal business location. The license
10 shall state whether the licensee is licensed as a residential mortgage
11 loan lender or servicer *or as a mortgage loan originator.*

12 (b) *The amendments to this section made by the act adding this*
13 *subdivision shall become operative July 31, 2010.*

14 *SEC. 69. Section 50209 is added to the Financial Code, to*
15 *read:*

16 50209. (a) *The unique identifier of any licensed mortgage loan*
17 *originator shall be clearly shown on all residential mortgage loan*
18 *application forms, solicitations, or advertisements, including*
19 *business cards or Internet Web sites, and any other documents as*
20 *established by rule, regulation, or order of the commissioner.*

21 (b) *This section shall become operative on July 31, 2010.*

22 *SEC. 70. Section 50302 of the Financial Code is amended to*
23 *read:*

24 50302. (a) As often as the commissioner deems necessary and
25 appropriate, but at least once every 48 months, the commissioner
26 shall examine the affairs of each *residential mortgage lender and*
27 *servicer* licensee for compliance with this division. The
28 commissioner shall appoint suitable persons to perform the
29 examination. The commissioner and his or her appointees may
30 examine the books, records, and documents of the licensee, and
31 may examine the licensee's officers, directors, employees, or agents
32 under oath regarding the licensee's operations. The commissioner
33 may cooperate with any agency of the state or federal government,
34 other states, agencies, the federal national mortgage association,
35 or the federal home loan mortgage corporation. The commissioner
36 may accept an examination conducted by one of these entities in
37 place of an examination by the commissioner under this law, unless
38 the commissioner determines that the examination does not provide
39 information necessary to enable the commissioner to fulfill his or
40 her responsibilities under this division.

1 (b) The commissioner shall provide a written statement of the
2 findings of the examination, issue a copy of that statement to each
3 licensee’s principals, officers, or directors, and take appropriate
4 steps to ensure correction of any violations of this division.

5 (c) Affiliates of a licensee are subject to examination by the
6 commissioner on the same terms as the licensee, but only when
7 reports from, or examination of, a licensee provides documented
8 evidence of unlawful activity between a licensee and affiliate
9 benefiting, affecting, or arising from the activities regulated by
10 this division.

11 (d) The *residential mortgage lender or servicer* ~~licensee~~ *licensee*
12 shall pay, and the commissioner shall assess, the reasonable
13 expenses of any examination of the licensee and affiliates,
14 consistent with the requirements of subdivision (c) of Section
15 50314.

16 (e) The statement of the findings of an examination shall belong
17 to the commissioner and shall not be disclosed to anyone other
18 than the licensee, law enforcement officials, or other state or federal
19 regulatory agencies for further investigation and enforcement.
20 Reports required of licensees by the commissioner under this
21 division and results of examinations performed by the
22 commissioner under this division are the property of the
23 commissioner.

24 (f) *The amendments to this section made by the act adding this*
25 *subdivision shall become operative July 31, 2010.*

26 *SEC. 71. Section 50307 of the Financial Code is amended to*
27 *read:*

28 50307. (a) Each *residential mortgage lender or servicer*
29 licensee shall file a report with the commissioner annually, on or
30 before the first day of March, giving the relevant information that
31 the commissioner reasonably requires to make the calculation
32 required by subdivision (a) of Section 50401. The report shall be
33 made under oath and in the form prescribed by the commissioner.

34 (b) A licensee shall make any other special reports to the
35 commissioner that the commissioner may, from time to time,
36 require.

37 (c) If any ~~person~~ *licensed residential mortgage lender or*
38 *servicer* subject to this division fails to make a report required by
39 law or by the commissioner, the commissioner may immediately

1 cause the books, records, papers, and affairs of that ~~person~~ licensee
2 to be thoroughly examined.

3 (d) *The amendments to this section made by the act adding this*
4 *subdivision shall become operative July 31, 2010.*

5 SEC. 72. *Section 50307.2 is added to the Financial Code, to*
6 *read:*

7 50307.2. (a) *The commissioner may require a licensee that*
8 *employs one or more mortgage loan originators to submit to the*
9 *Nationwide Mortgage Licensing System and Registry reports of*
10 *condition, which shall be in such form and shall contain such*
11 *information as the Nationwide Mortgage Licensing System and*
12 *Registry may require.*

13 (b) *This section shall become operative on July 31, 2010.*

14 SEC. 73. *Section 50317 of the Financial Code is amended to*
15 *read:*

16 50317. (a) Any person who has been convicted of, or pleaded
17 nolo contendere to any crime specified in subdivision (b) within
18 the past 10 years or has been held liable in any civil action by final
19 judgment or any administrative judgment by any public agency
20 within the past seven years, of any of the provisions specified in
21 subdivision (b), shall not serve as an officer, director, partner,
22 shareholder controlling 10 percent or more of the ownership
23 interests, trustee, or employee of a residential mortgage lender or
24 residential mortgage loan servicer. This subdivision shall not apply
25 to any person whose office, employment, ownership interest, or
26 other participation in the business of a licensed residential mortgage
27 lender or residential mortgage loan servicer commenced prior to
28 January 1, 1995, or whose criminal conviction, plea, or judgment
29 occurred prior to January 1, 1995.

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

33 (1) Offenses specified in Chapter 18 (commencing with Section
34 3350) of Division 1.

35 (2) Offenses specified in Article 4 (commencing with Section
36 5300) of Chapter 1 of Division 2.

37 (3) Offenses specified in Article 8 (commencing with Section
38 14750) of Chapter 4 of Division 5.

39 (4) Offenses specified in Chapter 7 (commencing with Section
40 17700) of Division 6.

1 (5) Offenses specified in Chapter 6 (commencing with Section
2 18435) of Division 7.

3 (6) Offenses specified in provisions of the laws of the United
4 States added or amended by the federal Financial Institutions
5 Reform, Recovery and Enforcement Act of 1989 (Public Law
6 101-73).

7 (7) Offenses involving robbery, burglary, theft, embezzlement,
8 fraud, fraudulent conversion or misappropriation of property,
9 forgery, bookmaking, receiving stolen property, counterfeiting,
10 extortion, checks, credit cards, or computer violations specified
11 in Section 502 of the Penal Code. For the purpose of this section,
12 but not Section 50318, an offense does not include a conviction
13 for which the person has obtained a certificate of rehabilitation
14 from a court of competent jurisdiction under Section 1203.4 or
15 4852.13 of the Penal Code or a similar certificate of rehabilitation
16 obtained in a foreign jurisdiction.

17 (c) On and after January 1, 1995, any officer, director, or other
18 person who seeks a controlling ownership interest of 10 percent
19 or more in the business of a licensed residential mortgage lender
20 or residential mortgage loan servicer shall, as a condition to
21 obtaining that interest or participation, authorize the commissioner
22 to have access to that person's state summary criminal history
23 information, as defined in Section 11105 of the Penal Code, for
24 purposes of determining whether the person has a prior conviction
25 of, or pleaded nolo contendere to, a criminal offense specified in
26 subdivision (b).

27 (d) Any state summary criminal history information obtained
28 pursuant to this section shall be kept confidential and no recipient
29 shall disclose the contents other than for the purpose of acquisition
30 of an ownership interest in or other participation in the business
31 of a licensed residential mortgage lender or residential mortgage
32 loan servicer.

33 (e) Any person who knowingly violates subdivision (a),
34 including, but not limited to, any residential mortgage lender or
35 residential mortgage loan servicer who permits an ownership
36 interest in or other participation in the business of a residential
37 mortgage lender or residential mortgage loan servicer in violation
38 of subdivision (a) shall, upon conviction, be subject to punishment
39 as set forth in Section 50500.

1 (f) Nothing in this section shall be construed to permit the
2 reinstatement of any person barred by the commissioner pursuant
3 to Section 50320 nor to prohibit the commissioner from bringing
4 any action pursuant to Section 50320.

5 (g) If any provision of this section or the application of this
6 section to any person or circumstances is held invalid, that
7 invalidity shall not affect other provisions or applications of this
8 section that can be given effect without the invalid provision or
9 application, and to this end the provisions of this section are
10 severable.

11 (h) For purposes of this section, the term “employee” means
12 (1) a *mortgage loan originator, including a loan officer* or other
13 individual who negotiates agreements with the public, or (2) an
14 individual with access to or responsibility for trust funds held by
15 the licensee.

16 (i) *The amendments to this section made by the act adding this*
17 *subdivision shall become operative July 31, 2010.*

18 SEC. 74. *Section 50318 of the Financial Code is amended to*
19 *read:*

20 50318. (a) The commissioner may, after appropriate notice
21 and opportunity for hearing, by order censure or suspend for a
22 period not exceeding 12 months, or bar from any position of
23 employment, management, or control any residential mortgage
24 lender~~or~~, residential mortgage loan servicer, *or mortgage loan*
25 *originator*, or any other person, if the commissioner finds either
26 of the following:

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

34 (2) That the person (A) has been convicted of or pleaded nolo
35 contendere to any crime, or (B) has been held liable in any civil
36 action by final judgment, or any administrative judgment by any
37 public agency, if that crime or civil or administrative judgment
38 involved any offense specified in subdivision (b) of Section 50317,
39 or any other offense reasonably related to the qualifications,

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

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

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

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

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

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

36 (g) For purposes of this section, the term “employee” means
37 (1) a *mortgage loan originator*, including a loan officer or other
38 individual who negotiates agreements with the public, or (2) an
39 individual with access to or responsibility for trust funds held by
40 the licensee.

1 *(h) The amendments to this section made by the act adding this*
2 *subdivision shall become operative July 31, 2010.*

3 *SEC. 75. Section 50320 of the Financial Code is amended to*
4 *read:*

5 50320. *(a) Whenever, in the opinion of the commissioner, a*
6 *person is engaged, either actually or through subterfuge, in the*
7 *business of making residential mortgage loans—~~or~~, servicing*
8 *residential mortgage loans, or engaging in business as a mortgage*
9 *loan originator, without a license from the commissioner, the*
10 *commissioner may order that person to desist and refrain. If, within*
11 *30 days after an order is served, a request for a hearing is filed in*
12 *writing and the hearing is not held within 60 days of the filing, the*
13 *order is rescinded. This section does not apply to persons exempted*
14 *under subdivision—~~(g)~~ (b) of Section—50003 50002.*

15 *(b) The amendments to this section made by the act adding this*
16 *subdivision shall become operative July 31, 2010.*

17 *SEC. 76. Section 50325 of the Financial Code is amended to*
18 *read:*

19 50325. *(a) The commissioner may immediately revoke the*
20 *residential mortgage lender's—~~or~~, residential mortgage loan*
21 *servicer's, or mortgage loan originator's license if the licensee*
22 *fails to comply with any order issued under Section 50318, 50319,*
23 *50321, 50322 or 50503. The commissioner shall not revoke the*
24 *license if, within 10 days from the effective date of the revocation*
25 *order, the licensee secures a court order restraining the enforcement*
26 *of the commissioner's revocation order.*

27 *(b) The amendments to this section made by the act adding this*
28 *subdivision shall become operative July 31, 2010.*

29 *SEC. 77. Section 50328 of the Financial Code is amended to*
30 *read:*

31 50328. *(a) Except in the case of an exempt person, whenever*
32 *the commissioner deems it to be necessary for the public interest,*
33 *the commissioner has continuous authority to exercise the powers*
34 *set forth in this division. These powers may be exercised whether*
35 *or not an application for a license has been filed with the*
36 *commissioner, any license has been issued, or if issued, has been*
37 *surrendered, suspended, or revoked, or has expired.*

38 *(b) The amendments to this section made by the act adding this*
39 *subdivision shall become operative July 31, 2010.*

1 *SEC. 78. Section 50333 of the Financial Code is amended to*
2 *read:*

3 50333. (a) The commissioner shall apply the guidance on
4 nontraditional mortgage product risks published on November 14,
5 2006, by the Conference of State Bank Supervisors and the
6 American Association of Residential Mortgage Regulators, and
7 the Statement on Subprime Mortgage Lending published on July
8 17, 2007, by the aforementioned entities and the National
9 Association of Consumer Credit Administrators, to licensees.

10 (b) The commissioner may adopt emergency and final rules to
11 clarify the application of this section as soon as possible.

12 (c) A licensee shall adopt and adhere to policies and procedures
13 that are reasonably intended to achieve the objectives set forth in
14 the documents described in subdivision (a). *A licensed mortgage*
15 *loan originator shall adhere to policies and procedures developed*
16 *by his or her employer in accordance with this division and*
17 *applicable federal law and regulation.*

18 (d) *The amendments to this section made by the act adding this*
19 *subdivision shall become operative July 31, 2010.*

20 *SEC. 79. Section 50401 of the Financial Code is amended to*
21 *read:*

22 50401. (a) In addition to other fees and reimbursements
23 required to be paid under this division, each *residential mortgage*
24 *lender or servicer* licensee shall pay to the commissioner an amount
25 equal to the lesser of: (1) its pro rata share of all costs and expenses
26 (including overhead and the maintenance of a prudent reserve not
27 to exceed 90 days' costs and expenses) that the commissioner
28 reasonably expects to incur in the current fiscal year in the
29 administration of this division and not otherwise recovered by the
30 commissioner under this division or from the State Corporations
31 Fund, plus a deficit or less a surplus actually incurred during the
32 prior fiscal year; or (2) five thousand dollars (\$5,000). The pro
33 rata share shall be the greater of either one thousand dollars
34 (\$1,000) or the sum of: (A) a number derived from the ratio of the
35 aggregate principal amount of the mortgage loans secured by
36 residential real property originated by the licensee to all mortgage
37 loans secured by residential real property originated by all licensees
38 under this division, as shown by the annual financial reports to the
39 commissioner, which number is then multiplied by one-half of the
40 costs and expenses estimated by the commissioner for the current

1 fiscal year; plus (B) a number derived from the ratio of the average
2 value of mortgage loans secured by residential real property
3 serviced by a licensee to the average value of all mortgage loans
4 secured by residential real property serviced by all licensees under
5 this division, as shown by the annual financial reports to the
6 commissioner, which number is then multiplied by one-half of the
7 costs and expenses estimated by the commissioner for the current
8 fiscal year. For the purposes of this section, the “principal amount”
9 of a mortgage loan means the initial total amount a borrower is
10 obligated to repay the lender and the “average value” of loans
11 serviced means the sum of the aggregate dollar value of all
12 mortgage loans secured by residential real property serviced by a
13 licensee, calculated as of the last day of each month in the calendar
14 year just ended, divided by 12.

15 In order for the commissioner to calculate the assessment under
16 this section, each *residential mortgage lender and servicer* licensee
17 shall file an annual report for the calendar year just ended
18 containing the information required by the commissioner on or
19 before March 1 of the year in which the assessment is to be
20 calculated.

21 In determining the amount assessed, the commissioner shall
22 consider all appropriations from the State Corporations Fund for
23 the support of this division and all reimbursements provided for
24 under this division.

25 (b) In no case shall the reimbursement, payment, or other fee
26 authorized by this section exceed the cost, including overhead,
27 reasonably incurred in the administration of this division, and the
28 maintenance of a prudent reserve not to exceed 90 days’ costs and
29 expenses.

30 (c) On or before the 30th day of ~~September~~ *November* in each
31 year, the commissioner shall notify each *residential mortgage*
32 *lender and servicer* licensee by mail of the amount assessed and
33 levied against it and that amount shall be paid ~~within 20 days by~~
34 *December 31*. If payment is not made ~~within 20 days by~~ *December*
35 *31*, the commissioner shall assess and collect a penalty, in addition
36 to the assessment of 1 percent of the assessment for each month
37 or part of a month that the payment is delayed or withheld.

38 (d) If a licensee fails to pay the assessment on or before the ~~30th~~
39 *31st day of January* following the day upon which payment is due,
40 the commissioner may by order summarily suspend or revoke the

1 license issued to the licensee. An order issued under this section
2 is not stayed by the filing of a request for a hearing. If, after an
3 order is made, the request for hearing is filed in writing within 15
4 days from the date of service of the order and a hearing is not held
5 within 60 days of the filing, the order is deemed rescinded as of
6 its effective date. During a period when its license is revoked or
7 suspended, a *residential mortgage lender and servicer* licensee
8 and any mortgage loan originator employed by the residential
9 mortgage lender or servicer shall not conduct business pursuant
10 to this division except as may be permitted by further order of the
11 commissioner. However, the revocation, suspension, or surrender
12 of a license shall not affect the powers of the commissioner as
13 provided in this division.

14 (e) *The amendments to this section made by the act adding this*
15 *subdivision shall become operative July 31, 2010.*

16 *SEC. 80. Section 50601 of the Financial Code is repealed.*

17 ~~50601. This division shall become operative on January 1,~~
18 ~~1996.~~

19 *SEC. 81. Section 50602 of the Financial Code is repealed.*

20 ~~50602. This division is repealed on January 1, 1996, unless the~~
21 ~~following two conditions are met. First, the Commissioner of~~
22 ~~Corporations must receive, on or before March 1, 1995, from no~~
23 ~~fewer than 150 persons, a notice of intention to file an application~~
24 ~~for licensure as a residential mortgage lender or residential~~
25 ~~mortgage loan servicer, accompanied by the application filing fee~~
26 ~~and an annual financial report for calendar year 1994 that meets~~
27 ~~the requirements of subdivision (a) of Section 50401. Second, the~~
28 ~~Legislature shall appropriate money for the implementation of this~~
29 ~~division to the Department of Corporations from Item~~
30 ~~2180-001-067 of the 1995-96 Budget Act. If the above two~~
31 ~~conditions are not met, all persons who have paid fees or~~
32 ~~assessments under this division shall receive a refund prior to the~~
33 ~~date of repeal.~~

34 *SEC. 82. Section 50700 of the Financial Code is amended to*
35 *read:*

36 50700. (a) A residential mortgage lender, or a person or
37 employee acting under the authority of a residential mortgage
38 lender's license, *including a mortgage loan originator*, shall not
39 provide brokerage services to a borrower, except as provided in
40 subdivision (c).

1 (b) “Brokerage services” means either of the following:

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

10 (2) Obtaining or attempting to obtain, on behalf of a borrower,
11 a residential mortgage loan, as defined in subdivision ~~(o)~~ (p) of
12 Section 50003, secured by residential real estate, as defined in
13 subdivision ~~(t)~~ (w) of Section 50003, made with the funds of
14 another institutional lender, as defined in paragraphs (1), (2), and
15 (4) of subdivision ~~(j)~~ (k) of Section 50003, but closed in the name
16 of the licensee, for a fee paid by the borrower or the institutional
17 lender.

18 (c) A residential mortgage lender *or a mortgage loan originator*
19 *employed by a residential mortgage lender* may provide brokerage
20 services under the authority of ~~its~~ *the lender’s* license, if the lender
21 first enters into a written brokerage agreement with the borrower
22 that satisfies the requirements of Section 50701.

23 (d) This chapter does not authorize a *residential mortgage lender*
24 licensee to do any of the following:

25 (1) Provide brokerage services through independent contractors.

26 (2) Obtain or attempt to obtain for a borrower a residential
27 mortgage loan that is a “high cost mortgage,” referred to in Section
28 152(aa)(1) of the Home Ownership and Equity Protection Act of
29 1994, as amended (15 U.S.C. Sec. 1602 (aa)).

30 (3) Hold itself out to borrowers, through advertising, as a
31 mortgage broker, rather than a residential mortgage lender.
32 However, a licensee shall disclose its status as a broker or agent
33 when that disclosure is required by law.

34 (4) Perform activity subject to Section 10131 of the Business
35 and Professions Code, except activities authorized by this division.

36 (e) *A mortgage loan originator may only provide brokerage*
37 *services as an employee of a licensed residential mortgage lender.*

38 (f) *The amendments to this section made by the act adding this*
39 *subdivision shall become operative July 31, 2010.*

1 SEC. 83. Section 50701 of the Financial Code is amended to
2 read:

3 50701. (a) As soon as practical after a borrower requests that
4 the *residential mortgage lender* licensee arrange a loan to be made
5 by another institutional lender, and before the licensee performs
6 brokerage services for the borrower, the licensee and borrower
7 shall enter into a written loan brokerage agreement that satisfies
8 the requirements of this section.

9 (b) Both the licensee's authorized representative, *who shall be*
10 *a licensed mortgage loan originator*, and the borrower shall sign
11 and date the loan brokerage agreement, and the licensee shall
12 deliver a copy of the fully executed loan brokerage agreement to
13 the borrower either upon execution, if the documents are signed
14 in the licensee's office, or within three business days after
15 execution.

16 (c) The loan brokerage agreement shall contain an explicit
17 statement that (1) the licensee is acting as the agent of the borrower
18 in providing brokerage services to the borrower, and (2) when
19 acting as agent for the borrower, it owes to that borrower a
20 fiduciary duty of utmost care, honesty, and loyalty in the
21 transaction, including the duty of full disclosure of all material
22 facts. If the licensee is authorized to act as an agent for any other
23 person, the brokerage agreement shall contain a statement of that
24 fact and identification of that person.

25 (d) The loan brokerage agreement shall contain a detailed
26 description of the services the licensee agrees to perform for the
27 borrower, and a good faith estimate of any fees the licensee will
28 receive for those services, whether paid by the borrower, the
29 institutional lender, or both.

30 (e) The loan brokerage agreement shall carry a clear and
31 conspicuous statement of the conditions under which the borrower
32 is obligated to pay the licensee for brokerage services rendered
33 under the agreement.

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

39 (1) Rescind the brokerage agreement.

1 (2) Recover fees paid by the borrower to the licensee for
2 brokerage services rendered by the licensee pursuant to the
3 agreement.

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

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

9 (h) The loan brokerage agreement shall be the only agreement
10 between the borrower and the licensee with respect to a single
11 loan.

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

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

23 (2) An application fee.

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

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

31 (1) The agreement specifies the services to be rendered for the
32 application fee.

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

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

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

3 (k) *The amendments to this section made by the act adding this*
4 *subdivision shall become operative July 31, 2010.*

5 ~~SEC. 7.~~

6 ~~SEC. 84.~~ The Legislature finds and declares that ~~Section 4~~
7 ~~Sections 4, 20, and 62~~ of this act imposes a limitation on the
8 public's right of access to the meetings of public bodies or the
9 writings of public officials and agencies within the meaning of
10 Section 3 of Article I of the California Constitution. Pursuant to
11 that constitutional provision, the Legislature makes the following
12 findings to demonstrate the interest protected by this limitation
13 and the need for protecting that interest:

14 In order to allow the Department of Real Estate *and the*
15 *Department of Corporations* to fully accomplish ~~its~~ *their* goals, it
16 is imperative to protect the interests of those persons submitting
17 information to the ~~department~~ *departments* to ensure that any
18 personal or sensitive business information that this act requires
19 those persons to submit is protected as confidential information.

20 ~~SEC. 8.~~

21 ~~SEC. 85.~~ The provisions of *Sections 1 to 6, inclusive*, of this
22 act shall become operative when the Real Estate Commissioner
23 issues a finding that the Nationwide Mortgage Licensing System
24 and Registry is capable of two-way electronic communication with
25 the enterprise information system maintained by the Department
26 of Real Estate.

27 ~~SEC. 86.~~ *The provisions of this act are severable. If any*
28 *provision of this act or its application is held invalid, that invalidity*
29 *shall not affect other provisions or applications that can be given*
30 *effect without the invalid provision or application.*

31 ~~SEC. 9.~~

32 ~~SEC. 87.~~ No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O