

AMENDED IN SENATE MARCH 17, 2009

AMENDED IN SENATE FEBRUARY 9, 2009

SENATE BILL

No. 36

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: mortgage loan originators.

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

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

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

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

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

licensure or license renewal to satisfy certain requirements, including educational requirements. The bill would require finance lenders and brokers, 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.~~

(3) This bill would delay the operation of its provisions with respect to real estate licensee’s until the Real Estate Commissioner issues a specified finding and would also provide that no person is required to have a mortgage loan originator license under the California Finance Lenders Law or the California Residential Mortgage Lending Act, nor a mortgage loan originator license endorsement under the Real Estate Law, as set forth in the bill, before August 1, 2010.

~~(3)~~

(4) 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.

1 SEC. 2. Section 10140.6 of the Business and Professions Code
2 is amended to read:

3 10140.6. (a) A real estate licensee shall not publish, circulate,
4 distribute, or cause to be published, circulated, or distributed in
5 any newspaper or periodical, or by mail, any matter pertaining to
6 any activity for which a real estate license is required that does
7 not contain a designation disclosing that he or she is performing
8 acts for which a real estate license is required.

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

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

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

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

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

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

39 10150. (a) Application for the real estate broker license
40 examination shall be made in writing to the commissioner. The

1 commissioner may prescribe the format and content of the broker
2 examination application. The application for the broker
3 examination shall be accompanied by the real estate broker license
4 examination fee.

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

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

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

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

32

33 Article 2.1. Secure and Fair Enforcement for Mortgage Licenses

34

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

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

39 (b) (1) “Mortgage loan originator” means an individual who
40 takes a residential mortgage loan application or offers or negotiates

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

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

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

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

20 (C) An individual that is solely involved in extensions of credit
21 relating to timeshare plans, as that term is defined in Section
22 101(53D) of Title 11 of the United States Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (1) ~~Fingerprints or fingerprint images~~ *Fingerprint images and*
7 *related information*, for purposes of performing a *federal, or both*
8 *a state and federal, criminal history background check.*

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

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

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

18 *(b) The commissioner may ask the Nationwide Mortgage*
19 *Licensing System and Registry to obtain state criminal history*
20 *background check information on applicants described in*
21 *subdivision (a) using the procedures set forth in subdivisions (c)*
22 *and (d).*

23 ~~(b)~~

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

38 ~~(e)~~

39 (d) The Nationwide Mortgage Licensing System and Registry
40 may request from the Department of Justice subsequent arrest

1 notification service, as provided pursuant to Section 11105.2 of
2 the Penal Code, for persons described in subdivision (a). ~~If~~
3 ~~requested by the department, the~~ *The* Department of Justice shall
4 provide the same electronic response to the department.

5 ~~(d)~~

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

8 10166.05. Notwithstanding any other provision of law, the
9 commissioner shall not issue a license endorsement to act as a
10 mortgage loan originator to an applicant unless the commissioner
11 makes all of the following findings:

12 (a) The applicant has never had a mortgage loan originator
13 license revoked in any ~~other~~ governmental jurisdiction, *except that*
14 *a subsequent formal vacation of a revocation shall not be deemed*
15 *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, under either of the following conditions, however, any
19 ~~conviction expunged from the applicant's record~~ *pardon of a*
20 *conviction* shall not be considered a conviction for purposes of
21 this subdivision:

22 (1) During the seven year period preceding the date of the
23 application for licensing.

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

27 (c) The applicant has demonstrated such financial responsibility,
28 character, and general fitness as to command the confidence of
29 the community and warrant a determination that the mortgage loan
30 originator will operate honestly, fairly, and efficiently within the
31 purposes of the article.

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

34 10166.06. (a) In addition to the requirements of Section 10153,
35 an applicant for a license endorsement as a mortgage loan
36 originator shall complete at least 20 hours of education courses,
37 which shall include at least the following:

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

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

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

3 (b) For purposes of this section, education courses are only
4 acceptable if they have been reviewed and approved, or otherwise
5 deemed acceptable, by the Nationwide Mortgage Licensing System
6 and Registry, in accordance with the SAFE Act, and by the
7 commissioner. Education may be offered in a classroom, online,
8 or by any other means approved by the Nationwide Mortgage
9 Licensing System and Registry, in accordance with the SAFE Act,
10 and by the commissioner. The commissioner may substitute any
11 of the courses described in subdivision (a) for the course
12 requirements of Section 10153.2, 10153.3, 10153.4, or 10153.5,
13 subject to a finding that the course requirements in subdivision (a)
14 are substantially equivalent to, and meet the intent of, Section
15 10153.2, 10153.3, 10153.4, or 10153.5, as applicable.

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

21 (d) Before being issued a license endorsement to act as a
22 mortgage loan originator, an individual shall pass a qualified
23 written test developed or otherwise deemed acceptable by the
24 Nationwide Mortgage Licensing System and Registry and
25 administered by a test provider approved or otherwise deemed
26 acceptable by the Nationwide Mortgage Licensing System and
27 Registry.

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

36 (f) Nothing in this section shall prohibit a test provider approved
37 by the Nationwide Mortgage Licensing System and Registry from
38 providing a test at the location of the employer of the applicant or
39 any subsidiary or affiliate of the employer of the applicant, or any

1 entity with which the applicant holds an exclusive arrangement to
2 conduct the business of a mortgage loan originator.

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

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

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

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

16 10166.07. (a) A real estate broker who acts pursuant to Section
17 10131.1 or subdivision (d) or (e) of Section 10131, and who makes,
18 arranges, or services one or more loans in a calendar year that are
19 secured by real property containing one to four residential units,
20 shall annually file a business activities report, within 90 days after
21 the end of the broker's fiscal year or within any additional time as
22 the commissioner may allow for filing for good cause. The report
23 shall contain within its scope all of the following information for
24 the fiscal year, relative to the business activities of the broker and
25 those of any other brokers and real estate salespersons acting under
26 that broker's supervision:

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

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

36 (A) Activities relating to mortgages, including arranging,
37 making, or servicing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 10166.08. Each mortgage loan originator shall submit reports
5 of condition to the Nationwide Mortgage Licensing System and
6 Registry reports of condition, and those reports shall be in the form
7 and shall contain information as the Nationwide Mortgage
8 Licensing System and Registry may require.

9 10166.09. The minimum standards for renewal of an
10 endorsement as a mortgage loan originator shall include the
11 following:

12 (a) The mortgage loan originator continues to meet the minimum
13 standards for obtaining an endorsement as a mortgage loan
14 originator.

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

17 10166.10. (a) A mortgage loan originator shall complete at
18 least eight hours of continuing education annually, which shall
19 include at least three hours relating to federal law and regulations,
20 two hours of ethics, which shall include instruction on fraud,
21 consumer protection, and fair lending issues, and two hours related
22 to lending standards for the nontraditional mortgage product
23 marketplace.

24 (b) For purposes of subdivision (a), continuing education courses
25 and course providers shall be reviewed and approved by the
26 commissioner and the Nationwide Mortgage Licensing System
27 and Registry.

28 (c) The commissioner shall have the authority to substitute any
29 of the courses described in subdivision (a) for the course
30 requirements of Section 10170.5, subject to a finding that the
31 course requirements in subdivision (a) are substantially equivalent
32 to, and meet the intent of, Section 10170.5.

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

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

4 (f) A mortgage loan originator may only receive credit for a
5 continuing education course in the year in which the course is
6 taken.

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

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

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

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

24 10166.11. (a) A real estate broker who acts pursuant to Section
25 10131.1 or subdivision (d) or (e) of Section 10131 and who makes,
26 arranges, or services loans secured by real property containing one
27 to four residential units, shall keep documents and records that
28 will properly enable the commissioner to determine whether the
29 residential mortgage brokerage, servicing, and lending functions
30 performed by the broker comply with this division and with all
31 applicable rules and orders made by the commissioner. These
32 documents shall include, at a minimum, the documents described
33 in Section 10148. Upon request of the commissioner, a real estate
34 broker shall file an authorization for disclosure to the commissioner
35 of financial records of his or her licensed business pursuant to
36 Section 7473 of the Government Code.

37 (b) Notwithstanding subdivision (a) of Section 10148, the
38 business documents and records of real estate brokers described
39 in subdivision (a) and real estate salespersons acting under those
40 brokers are subject to inspection and examination or audit by the

1 commissioner, at his or her discretion, after reasonable notice.
2 That real estate broker or salesperson shall, upon request by the
3 commissioner and within the time period specified in that request,
4 allow the commissioner, or his or her authorized representative,
5 to inspect and copy any business documents and records. The
6 commissioner may suspend or revoke the license of the broker or
7 salesperson if he or she fails to produce documents or records
8 within the time period specified in the request.

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

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

38 (b) The commissioner may impose a penalty against a real estate
39 broker or real estate salesperson whose affairs are examined or
40 reviewed pursuant to subdivision (a) based on the findings of the

1 examination or review. The commissioner may suspend or revoke
2 the license or license endorsement of a real estate broker or real
3 estate salesperson who fails to pay that penalty. In addition, the
4 commissioner may bring an action in an appropriate court of this
5 state to collect payment of the penalty.

6 (c) Penalties collected pursuant to subdivision (b) shall be
7 deposited into the Recovery Account of the Real Estate Fund and
8 shall, upon appropriation by the Legislature, be available for
9 expenditure for the purposes specified in Chapter 6.5 (commencing
10 with Section 10470).

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

19 10166.13. A real estate broker who acts pursuant to Section
20 10131.1 or subdivision (d) or (e) of Section 10131 and who makes,
21 arranges, or services loans secured by real property containing one
22 to four residential units shall make any special reports to the
23 commissioner that the commissioner may, from time to time,
24 require.

25 10166.14. A real estate broker shall notify the department when
26 he or she is no longer subject to this part. If a broker has already
27 made reports required by Sections 10166.07 and 10166.08 within
28 the year, he or she shall continue reports for that year, but shall
29 notify the department prior to the expiration of that year that he
30 or she will no longer be subject to this part in the succeeding year.

31 10166.15. (a) The commissioner shall regularly report
32 violations of this article, as well as enforcement actions taken
33 against any mortgage loan originator to whom an endorsement has
34 been issued, and enforcement actions taken against any individual
35 for failure to obtain an endorsement as a mortgage loan originator,
36 to the Nationwide Mortgage Licensing System and Registry.

37 (b) The commissioner shall establish a process that may be used
38 by mortgage loan originators to challenge information entered into
39 the Nationwide Mortgage Licensing System and Registry by the
40 commissioner.

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

5 10166.16. (a) Except as otherwise provided in Section 1512
6 of the SAFE Act, the requirements under any federal or state law
7 regarding the privacy or confidentiality of any information or
8 material provided to the Nationwide Mortgage Licensing System
9 and Registry, and any privilege arising under federal or state law,
10 including the rules of any federal or state court, with respect to
11 that information or material, shall continue to apply to the
12 information or material after the information or material has been
13 disclosed to the Nationwide Mortgage Licensing System and
14 Registry. The information and material may be shared with all
15 state and federal regulatory officials with mortgage industry
16 oversight authority without the loss of privilege or the loss of
17 confidentiality protections provided by federal or state law.

18 (b) For these purposes, the commissioner is authorized to enter
19 agreements or sharing arrangements with other governmental
20 agencies, the Conference of State Bank Supervisors, the American
21 Association of Residential Mortgage Regulators, or other
22 associations representing governmental agencies as established by
23 rule, regulation or order of the commissioner.

24 (c) Information or material that is subject to a privilege or
25 confidentiality under subdivision (a) shall not be subject to either
26 of the following:

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

30 (2) Subpoena or discovery, or admission into evidence, in any
31 private civil action or administrative process, unless with respect
32 to any privilege held by the Nationwide Mortgage Licensing
33 System and Registry with respect to the information or material,
34 the person to whom the information or material pertains waives,
35 in whole or in part, in the discretion of the person, that privilege.

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

1 10166.17. In addition to any other duties imposed upon the
2 commissioner by law, the commissioner shall require mortgage
3 loan originators to be licensed and registered through the
4 Nationwide Mortgage Licensing System and Registry. In order to
5 carry out this requirement the commissioner is authorized to
6 participate in the Nationwide Mortgage Licensing System and
7 Registry. For this purpose, the commissioner may establish by
8 rule, regulation, or order, requirements as necessary, including,
9 but not limited to, the following:

- 10 (a) Background checks for the following:
- 11 (1) Criminal history through fingerprint or other databases.
 - 12 (2) Civil or administrative records.
 - 13 (3) Credit history.
 - 14 (4) Any other information as deemed necessary by the
15 Nationwide Mortgage Licensing System and Registry.
- 16 (b) The payment of fees to apply for or renew licenses through
17 the Nationwide Mortgage Licensing System and Registry.
- 18 (c) The setting or resetting as necessary of renewal or reporting
19 dates.
- 20 (d) Requirements for amending or surrendering a license or any
21 other activities as the commissioner deems necessary for
22 participation in the Nationwide Mortgage Licensing System and
23 Registry.

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

26 10235.5. (a) No real estate licensee or mortgage loan originator
27 shall place an advertisement disseminated primarily in this state
28 for a loan unless there is disclosed within the printed text of that
29 advertisement, or the oral text in the case of a radio or television
30 advertisement, the Department of Real Estate license number and
31 the unique identifier assigned to that licensee by the Nationwide
32 Mortgage Licensing System and Registry under which the loan
33 would be made or arranged.

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

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

39 10236.4. (a) In compliance with Section 10235.5, every
40 licensed real estate broker shall also display his or her license

1 number on all advertisements where there is a solicitation for
2 borrowers or potential investors. Every mortgage loan originator,
3 as defined in Section 10166.01, shall also display the unique
4 identifier assigned to that individual by the Nationwide Mortgage
5 Licensing System and Registry on all advertisements where there
6 is a solicitation for borrowers.

7 (b) The disclosures required by Sections 10232.4 and 10240
8 shall include the licensee’s license number, the mortgage
9 originator’s unique identifier, if applicable, and the department’s
10 license information telephone number.

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

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

15 22012. (a) “Branch office license” means a license to engage
16 in business as a finance lender or broker at a location other than
17 the location identified in a finance lender or broker license
18 application or amended application.

19 (b) “Depository institution” has the same meaning as in Section
20 3 of the Federal Deposit Insurance Act, and includes any credit
21 union.

22 (c) “Federal banking agencies” means the Board of Governors
23 of the Federal Reserve System, the Comptroller of the Currency,
24 the Director of the Office of Thrift Supervision, the National Credit
25 Union Administration, and the Federal Deposit Insurance
26 Corporation.

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

32 (e) “Residential mortgage loan” means any loan primarily for
33 personal, family, or household use that is secured by a mortgage,
34 deed of trust, or other equivalent consensual security interest on
35 a dwelling, as defined in ~~Sec. 103(v) of the~~ *Section 103(v) of the*
36 *federal Truth in Lending Act*, or residential real estate upon which
37 is constructed or intended to be constructed a dwelling. “Dwelling”
38 means a residential structure that contains one to four units,
39 whether or not that structure is attached to real property. The term

1 includes an individual condominium unit, cooperative unit, mobile
2 home, or trailer, if it is used as a residence.

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

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

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

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

10 22013. (a) “Mortgage loan originator” means an individual
11 who, for compensation or gain, or in the expectation of
12 compensation or gain, takes a residential mortgage loan application
13 or offers or negotiates terms of a residential mortgage loan.

14 (b) Mortgage loan originator does not include any of the
15 following:

16 (1) An individual who performs purely administrative or clerical
17 tasks on behalf of a person meeting the definition of a mortgage
18 loan originator, except as provided in subdivision (c) of Section
19 22014. The term “administrative or clerical tasks” means the
20 receipt, collection, and distribution of information common for
21 the processing or underwriting of a loan in the mortgage industry
22 and communication with a consumer to obtain information
23 necessary for the processing or underwriting of a residential
24 mortgage loan, to the extent that the communication does not
25 include offering or negotiating loan rates or terms, or counseling
26 consumers about residential mortgage loan rates or terms.

27 (2) An individual that is not compensated by a lender, other
28 mortgage loan originator, or by any agent of any lender or other
29 mortgage loan originator.

30 (3) An individual that is solely involved in extensions of credit
31 relating to timeshare plans, as that term is defined in Section
32 101(53D) of Title 11 of the United States Code.

33 (4) An individual licensed as a mortgage loan originator pursuant
34 to the provisions of Article 2.1 (commencing with Section
35 10166.01) of Chapter 2 of Division 4 of the Business and
36 Professions Code and the SAFE Act.

37 (c) “Registered mortgage loan originator” means any individual
38 who is all of the following:

39 (1) Meets the definition of mortgage loan originator.

1 (2) Is an employee of a depository institution, a subsidiary that
2 is owned and controlled by a depository institution and regulated
3 by a federal banking agency, or an institution regulated by the
4 Farm Credit Administration.

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

7 (d) “Loan processor or underwriter” means an individual who
8 performs clerical or support duties as an employee at the direction
9 of, and subject to the supervision and instruction of, a mortgage
10 loan originator licensed by the state or a registered mortgage loan
11 originator.

12 ~~(e) This section shall become operative July 31, 2010.~~

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

14 22014. (a) A loan processor or underwriter who does not
15 represent to the public, through advertising or other means of
16 communicating or providing information, including the use of
17 business cards, stationery, brochures, signs, rate lists, or other
18 promotional items, that the individual can or will perform any of
19 the activities of a mortgage loan originator shall not be required
20 to be licensed as a mortgage loan originator.

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

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

36 ~~(e) This section shall become operative July 31, 2010.~~

37 SEC. 10. Section 22057 of the Financial Code is amended to
38 read:

39 22057. ~~(a)~~ This division does not apply to any loan that is
40 made or arranged by any person licensed as a real estate broker or

1 as a real estate salesperson by the state and secured by a lien on
2 real property, or to any licensed real estate broker or licensed real
3 estate salesperson when making such a loan. A licensed real estate
4 broker or licensed real estate salesperson may make a loan secured
5 by a lien on real property for sale to a finance lender or arrange
6 for a loan secured by a lien on real property to be made by a finance
7 lender without obtaining a license under this division.

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

10 SEC. 11. Section 22060 of the Financial Code is amended to
11 read:

12 22060. ~~(a)~~ This division does not apply to a loan made or
13 arranged by a licensed residential mortgage lender or servicer, or
14 an employee thereof, when acting under the authority of that
15 license.

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

18 SEC. 12. Section 22100 of the Financial Code is amended to
19 read:

20 22100. (a) No person shall engage in the business of a finance
21 lender or broker without obtaining a license from the commissioner.

22 (b) A finance lender or broker shall not employ a mortgage loan
23 originator unless the mortgage loan originator has first obtained a
24 license from the commissioner under this division or Division 20
25 (commencing with Section 50000), or has first obtained a license
26 endorsement from the Commissioner of Real Estate pursuant to
27 Article 2.1 (commencing with Section 10166.01) of Chapter 2 of
28 Division 4 of the Business and Professions Code.

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

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

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

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

39 SEC. 13. Section 22101 of the Financial Code is amended to
40 read:

1 22101. (a) An application for a license as a finance lender or
2 broker under this division shall be in the form and contain the
3 information that the commissioner may by rule require and shall
4 be filed upon payment of the fee specified in Section 22103.

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

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

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

19 (e) On and after July 31, 2010, the commissioner may require
20 an applicant to submit its application, or parts thereof, through the
21 Nationwide Mortgage Licensing System and Registry.

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

24 SEC. 14. Section 22101.5 of the Financial Code is amended
25 to read:

26 22101.5. (a) ~~(1)~~ The commissioner shall submit to the
27 Department of Justice fingerprint images and related information
28 required by the Department of Justice of all finance lender and
29 broker license candidates, as defined by subdivision (a) of Section
30 22101, for purposes of obtaining information as to the existence
31 and content of a record of state or federal convictions, state or
32 federal arrests, and information as to the existence and content of
33 a record of state or federal arrests for which the Department of
34 Justice establishes that the person is free on bail or on his or her
35 own recognizance pending trial or appeal.

36 ~~(2)~~

37 (b) When received, the Department of Justice shall forward to
38 the Federal Bureau of Investigation requests for federal summary
39 criminal history information received pursuant to this section. The
40 Department of Justice shall review the information returned from

1 the Federal Bureau of Investigation and compile and disseminate
 2 a response to the commissioner.

3 ~~(3)~~

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

7 ~~(4)~~

8 (d) The commissioner shall request from the Department of
 9 Justice subsequent arrest notification service, as provided pursuant
 10 to Section 11105.2 of the Penal Code, for license candidates
 11 described in ~~paragraph (1)~~ *subdivision (a)*.

12 ~~(5)~~

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

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

17 SEC. 15. Section 22102 of the Financial Code is amended to
 18 read:

19 22102. (a) A finance lender or broker licensee seeking to
 20 engage in business at a new location shall submit an application
 21 for a branch office license to the commissioner at least 10 days
 22 before engaging in business at a new location and pay the fee
 23 required by Section 22103. The commissioner may require an
 24 applicant seeking to engage in business at a new location to submit
 25 its application, or parts thereof, through the Nationwide Mortgage
 26 Licensing System and Registry.

27 (b) The licensee may engage in business at the new location 10
 28 days after the date of submission of a branch office application.

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

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

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

1 (e) The commissioner may adopt regulations to implement the
2 requirements of this section.

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

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

10 SEC. 16. Section 22103 of the Financial Code is amended to
11 read:

12 22103. ~~(a)~~ At the time of filing the application for a finance
13 lender, broker, or branch office license, the applicant shall pay to
14 the commissioner the sum of one hundred dollars (\$100) as a fee
15 for investigating the application, plus the cost of fingerprint
16 processing and the criminal history record check under Section
17 22101.5, and two hundred dollars (\$200) as an application fee.
18 The investigation fee, including the amount for the criminal history
19 record check, and the application fee are not refundable if an
20 application is denied or withdrawn.

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

23 SEC. 17. Section 22104 of the Financial Code is amended to
24 read:

25 22104. (a) The applicant shall file with the application for a
26 finance lender or broker license financial statements prepared in
27 accordance with generally accepted accounting principles and
28 acceptable to the commissioner that indicate a net worth of at least
29 twenty-five thousand dollars (\$25,000). Except as provided in
30 subdivision (b), a licensee shall maintain a net worth of at least
31 twenty-five thousand dollars (\$25,000) at all times.

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

35 (c) The commissioner may promulgate rules or regulations with
36 respect to the requirements for minimum net worth, as are
37 necessary to accomplish the purposes of this division and comply
38 with the SAFE Act.

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

1 SEC. 18. Section 22105.1 is added to the Financial Code, to
2 read:

3 22105.1. (a) An applicant for a mortgage loan originator
4 license shall apply in a form as prescribed by the commissioner.
5 Each form shall contain content as set forth by rule, regulation,
6 instruction, or procedure of the commissioner and may be changed
7 or updated as necessary by the commissioner in order to carry out
8 the purposes of this division.

9 *(b) Section 461 of the Business and Professions Code shall not*
10 *be applicable to the Department of Corporations when using a*
11 *national uniform application adopted or approved for use by the*
12 *Nationwide Mortgage Licensing System and Registry in connection*
13 *with the SAFE Act.*

14 ~~(b)~~

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

19 (1) ~~Fingerprints or fingerprint images~~ *Fingerprint images and*
20 *related information*, for purposes of performing a *federal, or both*
21 *a state and federal, criminal history background check.*

22 (2) Personal history and experience in a form prescribed by the
23 Nationwide Mortgage Licensing System and Registry, including
24 the submission of authorization for the Nationwide Mortgage
25 Licensing System and Registry and the commissioner to obtain
26 both of the following:

27 (A) An independent credit report obtained from a consumer
28 reporting agency.

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

31 *(d) The commissioner may ask the Nationwide Mortgage*
32 *Licensing System and Registry to obtain state criminal history*
33 *background check information on applicants described in*
34 *subdivision (a) using the procedures set forth in subdivisions (e)*
35 *and (f).*

36 ~~(e)~~

37 (e) If the Nationwide Mortgage Licensing System and Registry
38 electronically submits fingerprint images and related information,
39 as required by the Department of Justice, for an applicant for a
40 mortgage loan originator license, for the purposes of obtaining

1 information as to the existence and content of a record of state
2 convictions and state arrests and to the existence and content of a
3 record of state arrests for which the Department of Justice
4 establishes that the person is free on bail or on his or her
5 recognizance pending trial or appeal, the Department of Justice
6 shall provide an electronic response to the Nationwide Mortgage
7 Licensing System and Registry pursuant to paragraph (1) of
8 subdivision (p) of Section 11105 of the Penal Code, and shall
9 provide the same electronic response to the commissioner.

10 ~~(d)~~

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

17 ~~(e)~~

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

20 ~~(f) This section shall become operative on July 31, 2010.~~

21 SEC. 19. Section 22105.2 is added to the Financial Code, to
22 read:

23 22105.2. (a) The commissioner is authorized to establish
24 relationships or contracts with the Nationwide Mortgage Licensing
25 System and Registry or other entities designated by the Nationwide
26 Mortgage Licensing System and Registry to collect and maintain
27 records and process transaction fees or other fees related to
28 licensees or other persons subject to this division.

29 (b) For the purpose of participating in the Nationwide Mortgage
30 Licensing System and Registry, the commissioner is authorized
31 to waive or modify, in whole or in part, by rule, regulation, or
32 order, any or all of the requirements of this division and to establish
33 new requirements as reasonably necessary to participate in the
34 Nationwide Mortgage Licensing System and Registry.

35 (c) The commissioner may use the Nationwide Mortgage
36 Licensing System and Registry as a channeling agent for requesting
37 information from, and distributing information to, the Department
38 of Justice or any governmental agency.

39 (d) The commissioner may use the Nationwide Mortgage
40 Licensing System and Registry as a channeling agent for requesting

1 and distributing information to and from any source so directed
2 by the commissioner.

3 (e) The commissioner shall establish a process where applicants
4 and licensees may challenge information entered into the
5 Nationwide Mortgage Licensing System and Registry by the
6 commissioner.

7 ~~(f) This section shall become operative July 31, 2010.~~

8 SEC. 20. Section 22105.3 is added to the Financial Code, to
9 read:

10 22105.3. (a) Except as otherwise provided in Section 1512 of
11 the SAFE Act, the requirements under any federal or state law
12 regarding the privacy or confidentiality of any information or
13 material provided to the Nationwide Mortgage Licensing System
14 and Registry, and any privilege arising under federal or state law,
15 including the rules of any federal or state court, with respect to
16 that information or material, shall continue to apply to the
17 information or material after the information or material has been
18 disclosed to the Nationwide Mortgage Licensing System and
19 Registry. The information and material may be shared with all
20 state and federal regulatory officials with mortgage industry
21 oversight authority without the loss of privilege or the loss of
22 confidentiality protections provided by federal or state law.

23 (b) For these purposes, the commissioner is authorized to enter
24 agreements or share arrangements with other governmental
25 agencies, the Conference of State Bank Supervisors, the American
26 Association of Residential Mortgage Regulators, or other
27 associations representing governmental agencies as established by
28 rule, regulation, or order of the commissioner.

29 (c) Information or material that is subject to a privilege or
30 confidentiality under subdivision (a) shall not be subject to the
31 following:

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

35 (2) Subpoena or discovery, or admission into evidence, in any
36 private civil action or administrative process, unless with respect
37 to any privilege held by the Nationwide Mortgage Licensing
38 System and Registry with respect to the information or material,
39 the person to whom the information or material pertains waives,
40 in whole or in part, in the discretion of the person, that privilege.

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

6 ~~(d) This section shall become operative July 31, 2010.~~

7 SEC. 21. Section 22105.4 is added to the Financial Code, to
8 read:

9 22105.4. ~~(a)~~ The commissioner shall regularly report violations
10 of this division, as well as enforcement actions and other relevant
11 information, to the Nationwide Mortgage Licensing System and
12 Registry, to the extent that information is public record.

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

14 SEC. 22. Section 22106 of the Financial Code is amended to
15 read:

16 22106. (a) The finance lender or broker license shall state the
17 name of the licensee, and if the licensee is a partnership, the names
18 of its general partners, and if a corporation or an association, the
19 date and place of its incorporation or organization, and the address
20 of the licensee's principal business location. On the approval and
21 licensing of a location pursuant to Section 22101 or 22102, the
22 commissioner shall issue an original license endorsed to show the
23 address of the authorized location and, if applicable, the name of
24 the subsidiary corporation licensed to operate the location. The
25 license shall state whether the licensee is licensed as a finance
26 lender or a broker.

27 (b) An application for a license for a business location outside
28 this state shall constitute an agreement by the applicant to do all
29 of the following:

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

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

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

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

3 SEC. 23. Section 22107 of the Financial Code is amended to
4 read:

5 22107. (a) Each finance lender and broker licensee shall pay
6 to the commissioner through the Nationwide Mortgage Licensing
7 System and Registry its pro rata share of all costs and expenses,
8 including the costs and expenses associated with the licensing of
9 mortgage loan originators it employs, reasonably incurred in the
10 administration of this division, as estimated by the commissioner,
11 for the ensuing year and any deficit actually incurred or anticipated
12 in the administration of the program in the year in which the
13 assessment is made. The pro rata share shall be the proportion that
14 a licensee's gross income bears to the aggregate gross income of
15 all licensees as shown by the annual financial reports to the
16 commissioner, for the costs and expenses remaining after the
17 amount assessed pursuant to subdivision (c).

18 (b) On or before the 30th day of November in each year, the
19 commissioner shall notify each licensee of the amount assessed
20 and levied against it and that amount shall be paid by December
21 31. If payment is not made by December 31, the commissioner
22 shall assess and collect a penalty, in addition to the assessment, of
23 1 percent of the assessment for each month or part of a month that
24 the payment is delayed or withheld.

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

28 (d) If a licensee fails to pay the assessment on or before the 31st
29 day of January following the day upon which payment is due, the
30 commissioner may by order summarily suspend or revoke the
31 certificate issued to the licensee. If, after an order is made, a request
32 for hearing is filed in writing within 30 days, and a hearing is not
33 held within 60 days thereafter, the order is deemed rescinded as
34 of its effective date. During any period when its certificate is
35 revoked or suspended, a finance lender or broker licensee and any
36 mortgage loan originator licensee employed by the finance lender
37 or broker shall not conduct business pursuant to this division except
38 as may be permitted by order of the commissioner. However, the
39 revocation, suspension, or surrender of a certificate shall not affect
40 the powers of the commissioner as provided in this division.

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

3 SEC. 24. Section 22109 of the Financial Code is amended to
4 read:

5 22109. (a) Upon reasonable notice and opportunity to be heard,
6 the commissioner may deny the application for a finance lender
7 or broker license for any of the following reasons:

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

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

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

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

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

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

37 SEC. 25. Section 22109.1 is added to the Financial Code, to
38 read:

1 22109.1. ~~(a)~~—The commissioner shall not issue a mortgage loan
2 originator license unless the commissioner makes, at a minimum,
3 the following findings:
4 ~~(1)~~
5 (a) The applicant has never had a mortgage loan originator
6 license revoked in any governmental jurisdiction, except that a
7 subsequent formal vacation of a revocation shall not be deemed a
8 revocation.
9 ~~(2)~~
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, as follows:
13 ~~(A)~~
14 (1) During the seven-year period preceding the date of the
15 application for licensing and registration.
16 ~~(B)~~
17 (2) At any time preceding the date of application, if the felony
18 involved an act of fraud, dishonesty, or a breach of trust, or money
19 laundering.
20 ~~(C)~~
21 (3) Provided that any pardon of a conviction shall not be a
22 conviction for purposes of this subdivision.
23 ~~(3)~~
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 ~~(4)~~
30 (d) The applicant has completed the prelicensing education
31 requirement described in Section 22109.2.
32 ~~(5)~~
33 (e) The applicant has passed a written test that meets the test
34 requirement described in Section 22109.3.
35 ~~(6)~~
36 (f) The applicant is employed by, and subject to the supervision
37 of, a finance lender or broker that has obtained a license from the
38 commissioner pursuant to this division.
39 ~~(b) This section shall become operative on July 31, 2010.~~

1 SEC. 26. Section 22109.2 is added to the Financial Code, to
2 read:

3 22109.2. (a) An applicant for a mortgage loan originator
4 license shall complete at least 20 hours of education approved in
5 accordance with subdivision (b). The education shall include at
6 least the following:

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

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

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

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

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

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

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

30 (f) An individual previously licensed under this division as a
31 mortgage loan originator, applying to be licensed again, shall prove
32 that he or she has completed all of the continuing education
33 requirements for the year in which the license was last held.

34 ~~(g) This section shall become operative on July 31, 2010.~~

35 SEC. 27. Section 22109.3 is added to the Financial Code, to
36 read:

37 22109.3. (a) An applicant for a mortgage loan originator
38 license shall pass a qualified written test developed by the
39 Nationwide Mortgage Licensing System and Registry and

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

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

7 (1) Ethics.

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

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

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

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

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

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

27 (f) An applicant who fails three consecutive retests shall wait
28 at least six months before retesting.

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

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

34 SEC. 28. Section 22109.4 is added to the Financial Code, to
35 read:

36 22109.4. (a) A mortgage loan originator shall comply with
37 the requirements of this section on or before December 31 of every
38 year.

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

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

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

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

8 (c) The license of a mortgage loan originator failing to satisfy
9 the minimum standards for license renewal shall expire at midnight
10 on January 31, except as provided in subdivision (h) of Section
11 22109.5. The commissioner may adopt procedures for the
12 reinstatement of expired licenses consistent with the standards
13 established by the Nationwide Mortgage Licensing System and
14 Registry.

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

16 SEC. 29. Section 22109.5 is added to the Financial Code, to
17 read:

18 22109.5. (a) A licensed mortgage loan originator shall
19 complete at least eight hours of continuing education approved in
20 accordance with subdivision (b). The continuing education shall
21 include at least the following:

- 22 (1) Three hours of instruction on federal law and regulations.
- 23 (2) Two hours of ethics, which shall include instruction on fraud,
24 consumer protection, and fair lending issues.
- 25 (3) Two hours of training related to lending standards for the
26 nontraditional mortgage product marketplace.

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

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

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

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

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

5 (2) May not take the same approved course in the same or
 6 successive years to meet the annual requirements for continuing
 7 education.

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

13 (g) A person who has successfully completed continuing
 14 education requirements approved by the Nationwide Mortgage
 15 Licensing System and Registry for any state other than California
 16 shall be granted credit toward completion of continuing education
 17 requirements in California.

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

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

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

27 SEC. 30. Section 22109.6 is added to the Financial Code, to
 28 read:

29 22109.6. ~~(a)~~—In addition to any other duties imposed upon the
 30 commissioner by law, the commissioner shall require mortgage
 31 loan originators to be licensed and registered through the
 32 Nationwide Mortgage Licensing System and Registry. In order to
 33 carry out this requirement, the commissioner is authorized to
 34 participate in the Nationwide Mortgage Licensing System and
 35 Registry. For this purpose, the commissioner may establish by
 36 rule, regulation, or order, requirements as necessary, including,
 37 but not limited to, the following:

38 ~~(1)~~

39 ~~(a)~~ Background information for the following:

40 ~~(A)~~

- 1 (1) Criminal history through fingerprint or other databases.
- 2 ~~(B)~~
- 3 (2) Civil or administrative records.
- 4 ~~(C)~~
- 5 (3) Credit history.
- 6 ~~(D)~~
- 7 (4) Any other information as deemed necessary by the
- 8 Nationwide Mortgage Licensing System and Registry.
- 9 ~~(2)~~
- 10 (b) The payment of fees to apply for or renew licenses through
- 11 the Nationwide Mortgage Licensing System and Registry.
- 12 ~~(3)~~
- 13 (c) The setting or resetting as necessary of renewal or reporting
- 14 dates.
- 15 ~~(4)~~
- 16 (d) Requirements for amending or surrendering a license or any
- 17 other activities as the commissioner deems necessary for
- 18 participation in the Nationwide Mortgage Licensing System and
- 19 Registry.
- 20 ~~(b) This section shall become operative on July 31, 2010.~~

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

23 22151. (a) A finance lender license, broker license, and the
 24 license of every mortgage loan originator employed by a lender
 25 or finance broker, along with any currently effective order of the
 26 commissioner approving a different name pursuant to Section
 27 22155, shall be conspicuously posted in the place of business
 28 authorized by the license.

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

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

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

39 22152. ~~(a)~~ A finance lender or broker licensee shall maintain
 40 only one place of business under a duplicate or original license

1 issued pursuant to Section 22101 or 22102. The commissioner
2 may issue more than one license to the same licensee upon
3 compliance with all the provisions of this division governing an
4 original issuance of a license.

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

7 SEC. 33. Section 22153 of the Financial Code is amended to
8 read:

9 22153. (a) If a finance lender or broker licensee seeks to
10 change its place of business to a street address other than that
11 designated in its license, the licensee shall provide notice to the
12 commissioner at least 10 days prior to the change. The
13 commissioner shall notify the licensee within 10 days if the
14 commissioner disapproves the change, and if the commissioner
15 does not notify the licensee of disapproval within 10 days, the
16 change in address shall be deemed approved. The commissioner
17 may require an applicant to submit its application to change its
18 place of business through the Nationwide Mortgage Licensing
19 System and Registry.

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

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

28 SEC. 34. Section 22154 of the Financial Code is amended to
29 read:

30 22154. (a) No licensee shall conduct the business of making
31 loans under this division within any office, room, or place of
32 business in which any other business is solicited or engaged in, or
33 in association or conjunction therewith, except as is authorized in
34 writing by the commissioner upon the commissioner’s finding that
35 the character of the other business is such that the granting of the
36 authority would not facilitate evasions of this division or of the
37 rules and regulations made pursuant to this division. An
38 authorization once granted remains in effect until revoked by the
39 commissioner. The commissioner may authorize the other business
40 through the Nationwide Mortgage Licensing System and Registry.

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

12 (c) The following definitions govern the construction of this
13 section:

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

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

25 ~~(d) The amendments to this section made by the act adding this~~
26 ~~subdivision shall become operative July 31, 2010.~~

27 SEC. 35. Section 22155 of the Financial Code is amended to
28 read:

29 22155. ~~(a)~~—No finance lender, broker, or mortgage loan
30 originator licensee shall transact the business licensed or make
31 any loan provided for by this division under any other name or at
32 any other place of business than that named in the license except
33 pursuant to a currently effective written order of the commissioner
34 authorizing the other name or other place of business. The
35 commissioner’s order, while effective, shall be deemed to amend
36 the original license issued pursuant to Section 22105 or 22109.1.
37 Notwithstanding any provision of this section, a licensee may make
38 any loan and engage in any other business provided for by this
39 division, other than the business described in subdivision (b) of

1 Section 22154, at a place other than the licensed location under
2 either of the following conditions:

3 (1)

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

10 (2)

11 (b) The licensee makes a solicitation or advertises for, or makes
12 an offer of, a loan displayed on “home pages” or similar methods
13 by the licensee on the Internet, the World Wide Web, or similar
14 proprietary or common carrier electronic systems, and the
15 prospective borrower may transmit information over these
16 electronic systems to the licensee in connection with the licensee’s
17 offer to make a loan.

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

20 SEC. 36. Section 22156 of the Financial Code is amended to
21 read:

22 22156. ~~(a)~~ Finance lender, broker, and mortgage loan originator
23 licensees shall keep and use in their business, books, accounts,
24 and records which will enable the commissioner to determine if
25 the licensee is complying with the provisions of this division and
26 with the rules and regulations made by the commissioner. On any
27 loan secured by real property in which loan proceeds were
28 disbursed to an independent escrowholder, the licensee shall retain
29 records and documents as set forth by rules of the commissioner
30 adopted pursuant to Section 22150. Upon request of the
31 commissioner, licensees shall file an authorization for disclosure
32 to the commissioner of financial records of the licensed business
33 pursuant to Section 7473 of the Government Code.

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

36 SEC. 37. Section 22157 of the Financial Code is amended to
37 read:

38 22157. ~~(a)~~ Finance lender, broker, and mortgage loan originator
39 licensees shall preserve their books, accounts, and records,

1 including cards used in the card system, if any, for at least three
2 years after making the final entry on any loan recorded therein.

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

5 SEC. 38. Section 22159 of the Financial Code is amended to
6 read:

7 22159. (a) Each finance lender and broker licensee shall file
8 an annual report with the commissioner, on or before the 15th day
9 of March, giving the relevant information that the commissioner
10 reasonably requires concerning the business and operations
11 conducted by the licensee within the state during the preceding
12 calendar year for each licensed place of business. The individual
13 annual reports filed pursuant to this section shall be made available
14 to the public for inspection except, upon request in the annual
15 report to the commissioner, the balance sheet contained in the
16 annual report of a sole proprietor or any other nonpublicly traded
17 persons. “Nonpublicly traded person” for purposes of this section
18 means persons with securities owned by 35 or fewer individuals.
19 The report shall be made under oath and in the form prescribed by
20 the commissioner.

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

23 (c) The commissioner may require a licensee that employs one
24 or more mortgage loan originators to submit to the Nationwide
25 Mortgage Licensing System and Registry reports of condition,
26 which shall be in the form and shall contain the information as the
27 Nationwide Mortgage Licensing System and Registry may require.

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

30 SEC. 39. Section 22168 of the Financial Code is amended to
31 read:

32 22168. (a) The commissioner may, after appropriate notice
33 and opportunity for hearing, suspend for a period not to exceed 12
34 months or bar a person from any position of employment with a
35 licensee if the commissioner finds that the person has willfully
36 used or claimed without authority a designation or certification of
37 special education, practice, or skill that the person has not attained,
38 or willfully held out to the public a confusingly similar designation
39 or certification for the purpose of misleading the public regarding
40 his or her qualifications or experience.

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

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

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

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

27 SEC. 40. Section 22169 of the Financial Code is amended to
28 read:

29 22169. (a) The commissioner may, after appropriate notice
30 and opportunity for hearing, by order, censure or suspend for a
31 period not exceeding 12 months, or bar from any position of
32 employment, management, or control any finance lender, broker,
33 mortgage loan originator, or any other person, if the commissioner
34 finds either of the following:

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

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

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

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

24 (d) Persons suspended or barred under this section are prohibited
25 from participating in any business activity of a finance lender,
26 broker, or mortgage loan originator, and from engaging in any
27 business activity on the premises where a finance lender, broker,
28 or mortgage loan originator is conducting business.

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

31 SEC. 41. Section 22171 of the Financial Code is amended to
32 read:

33 22171. (a) The commissioner shall apply the guidance on
34 nontraditional mortgage product risks published on November 14,
35 2006, by the Conference of State Bank Supervisors and the
36 American Association of Residential Mortgage Regulators, and
37 the Statement on Subprime Mortgage Lending published on July
38 17, 2007, by the aforementioned entities and the National
39 Association of Consumer Credit Administrators, to licensees.

1 (b) The commissioner may adopt emergency and final
2 regulations to clarify the application of this section as soon as
3 possible.

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

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

12 SEC. 42. Section 22347 is added to the Financial Code, to read:

13 22347. ~~(a)~~ The unique identifier of any licensed mortgage loan
14 originator shall be clearly shown on all residential mortgage loan
15 application forms, solicitations, or advertisements, including
16 business cards or Internet Web sites, and any other documents as
17 established by rule, regulation, or order of the commissioner.

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

19 SEC. 43. Section 22700 of the Financial Code is amended to
20 read:

21 22700. (a) Finance lender and broker licenses issued under
22 this division shall be renewed annually upon the payment of an
23 annual assessment, and if renewed by the licensee, shall remain
24 in effect until they are surrendered, revoked, or suspended.

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

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

36 SEC. 44. Section 22755 is added to the Financial Code, to read:

37 22755. ~~(a)~~ It is a violation of this division for a mortgage loan
38 originator to do any of the following:

39 (1)

- 1 (a) Directly or indirectly employ any scheme, device, or artifice
2 to defraud or mislead borrowers or lenders or to defraud any
3 person.
4 ~~(2)~~
- 5 (b) Engage in any unfair or deceptive practice toward any
6 person.
7 ~~(3)~~
- 8 (c) Obtain property by fraud or misrepresentation.
9 ~~(4)~~
- 10 (d) Solicit or enter into a contract with a borrower that provides
11 in substance that the mortgage loan originator may earn a fee or
12 commission through best efforts to obtain a loan even though no
13 loan is actually obtained for the borrower.
14 ~~(5)~~
- 15 (e) Solicit, advertise, or enter into a contract for specific interest
16 rates, points, or other financing terms unless the terms are actually
17 available at the time of soliciting, advertising, or contracting.
18 ~~(6)~~
- 19 (f) Conduct any business covered by this division without
20 holding a valid license as required under this division, or assist or
21 aide and abet any person in the conduct of business under this
22 division without a valid license as required under this division.
23 ~~(7)~~
- 24 (g) Fail to make disclosures as required by this division and any
25 other applicable state or federal law, including regulations
26 thereunder.
27 ~~(8)~~
- 28 (h) Fail to comply with this division or rules or regulations
29 promulgated under this division, or fail to comply with any other
30 state or federal law, including the rules and regulations thereunder,
31 applicable to any business authorized or conducted under this
32 division.
33 ~~(9)~~
- 34 (i) Make, in any manner, any false or deceptive statement or
35 representation including, with regard to the rates, points, or other
36 financing terms or conditions for a residential mortgage loan, or
37 engage in bait and switch advertising.
38 ~~(10)~~
- 39 (j) Negligently make any false statement or knowingly and
40 willfully make any omission of material fact in connection with

1 any information or reports filed with a governmental agency or
2 the Nationwide Mortgage Licensing System and Registry or in
3 connection with any investigation conducted by the commissioner
4 or another governmental agency.

5 ~~(11)~~

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

13 ~~(12)~~

14 (l) Collect, charge, attempt to collect or charge, or use or propose
15 any agreement purporting to collect or charge any fee prohibited
16 by this division.

17 ~~(13)~~

18 (m) Cause or require a borrower to obtain property insurance
19 coverage in an amount that exceeds the replacement cost of the
20 improvements as established by the property insurer.

21 ~~(14)~~

22 (n) Fail to truthfully account for moneys belonging to a party
23 of a residential mortgage loan transaction.

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

25 SEC. 45. Section 50002 of the Financial Code is amended to
26 read:

27 50002. (a) No person shall engage in the business of making
28 residential mortgage loans or servicing residential mortgage loans,
29 in this state, without first obtaining a license from the commissioner
30 in accordance with the requirements of Chapter 2 (commencing
31 with Section 50120) or Chapter 3 (commencing with Section
32 50130), and any rules promulgated by the commissioner under
33 this law, unless a person or transaction is excepted from a definition
34 or exempt from licensure by a provision of this law or a rule of
35 the commissioner.

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

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) An agency or other instrumentality of the federal
17 government, or state or municipal government.

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

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

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

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

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

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

38 (13) A registered mortgage loan originator described in
39 subdivision (d).

1 (c) An individual, unless specifically exempted under
2 subdivision (d), shall not engage in the business of a mortgage
3 loan originator with respect to any dwelling located in this state
4 without first obtaining and maintaining annually a license in
5 accordance with the requirements of Chapter 3.5 (commencing
6 with Section 50140) and any rules promulgated by the
7 commissioner under that chapter. Each licensed mortgage loan
8 originator shall register with and maintain a valid unique identifier
9 issued by the Nationwide Mortgage Licensing System and Registry.

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

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

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

23 SEC. 46. Section 50002.5 is added to the Financial Code, to
24 read:

25 50002.5. (a) A residential mortgage lender or servicer shall
26 not employ a mortgage loan originator unless the mortgage loan
27 originator has first obtained a license from the commissioner under
28 this division or Division 9 (commencing with Section 22000), or
29 has first obtained a license endorsement from the commissioner
30 of Real Estate pursuant to Article 2.1 (commencing with Section
31 10166.01) of Chapter 2 of Division 4 of the Business and
32 Professions Code.

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

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

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

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

2 (e) *No mortgage loan originator licensed under this division*
3 *shall engage in any activity that is not an authorized activity for*
4 *a licensed residential mortgage lender or residential mortgage*
5 *servicer pursuant to this division.*

6 SEC. 47. Section 50003 of the Financial Code is amended to
7 read:

8 50003. (a) “Annual audit” means a certified audit of the
9 licensee’s books, records, and systems of internal control performed
10 by an independent certified public accountant in accordance with
11 generally accepted accounting principles and generally accepted
12 auditing standards.

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

14 (c) “Buy” includes exchange, offer to buy, or solicitation to
15 buy.

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

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

28 (f) “Depository institution” has the same meaning as in Section
29 3 of the Federal Deposit Insurance Act, and includes any credit
30 union.

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

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

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

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

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

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

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

38 (4) A corporation or other entity with outstanding securities
39 registered under Section 12 of the *federal* Securities Exchange Act

1 of 1934 or a wholly owned subsidiary of that corporation or entity,
2 provided that the purchaser represents either of the following:

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

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

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

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

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

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

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

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

39 (11) A trust or other business entity established by an
40 institutional investor for the purpose of issuing or facilitating the

1 issuance of securities representing undivided interests in, or rights
2 to receive payments from or to receive payments primarily from,
3 a pool of financial assets held by the trust or business entity,
4 provided that all of the following apply:

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

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

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

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

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

24 (p) “Mortgage loan,” “residential mortgage loan,” or “home
25 mortgage loan” means, ~~when used in the provisions of this division~~
26 ~~applicable to residential mortgage lenders and servicers,~~ a federally
27 regulated mortgage loan as defined in Section 3500.2 of Title 24
28 of the Code of Federal Regulations, or a loan made to finance
29 construction of a one to four family dwelling.

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

37 (r) “Nationwide Mortgage Licensing System and Registry”
38 means a mortgage licensing system developed and maintained by
39 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 (s) “Net worth” has the meaning set forth in Section 50201.

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

15 (u) “Person” means a natural person, a sole proprietorship, a
16 corporation, a partnership, a limited liability company, an
17 association, a trust, a joint venture, an unincorporated organization,
18 a joint stock company, a government or a political subdivision of
19 a government, and any other entity.

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

31 ~~(w)~~

32 (v) “Residential real property” or “residential real estate” means
33 real property located in this state that is improved by a one-to-four
34 family dwelling.

35 ~~(x)~~

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

38 ~~(y)~~

39 (x) “Service” or “servicing” means receiving more than three
40 installment payments of principal, interest, or other amounts placed

1 in escrow, pursuant to the terms of a mortgage loan and performing
2 services by a licensee relating to that receipt or the enforcement
3 of its receipt, on behalf of the holder of the note evidencing that
4 loan.

5 ~~(z)~~

6 (y) “Sell” includes exchange, offer to sell, or solicitation to sell.

7 ~~(aa)~~

8 (z) “Unique identifier” means a number or other identifier
9 assigned by protocols established by the Nationwide Mortgage
10 Licensing System and Registry.

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

13 SEC. 48. Section 50003.5 is added to the Financial Code, to
14 read:

15 50003.5. (a) “Mortgage loan originator” means an individual
16 who, for compensation or gain, or in the expectation of
17 compensation or gain, takes a residential mortgage loan application
18 or offers or negotiates terms of a residential mortgage loan.

19 (b) Mortgage loan originator does not include any of the
20 following:

21 (1) An individual who performs purely administrative or clerical
22 tasks on behalf of a person meeting the definition of a mortgage
23 loan originator, except as provided in subdivision (c) of Section
24 50003.6. The term “administrative or clerical tasks” means the
25 receipt, collection, and distribution of information common for
26 the processing or underwriting of a loan in the mortgage industry
27 and communication with a consumer to obtain information
28 necessary for the processing or underwriting of a residential
29 mortgage loan, to the extent that the communication does not
30 include offering or negotiating loan rates or terms, or counseling
31 consumers about residential mortgage loan rates or terms.

32 (2) An individual that is not compensated by a lender, other
33 mortgage loan originator, or by any agent of any lender or other
34 mortgage loan originator.

35 (3) An individual that is solely involved in extensions of credit
36 relating to timeshare plans, as that term is defined in Section
37 101(53D) of Title 11 of the United States Code.

38 (4) An individual licensed as a mortgage loan originator pursuant
39 to Article 2.1 (commencing with Section 10166.01) of Chapter 2

1 of Division 4 of the Business and Professions Code and the SAFE
2 Act.

3 (c) “Registered mortgage loan originator” means any individual
4 who is all of the following:

5 (1) Meets the definition of mortgage loan originator.

6 (2) Is an employee of a depository institution, a subsidiary that
7 is owned and controlled by a depository institution and regulated
8 by a federal banking agency, or an institution regulated by the
9 Farm Credit Administration.

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

12 (d) “Loan processor or underwriter” means an individual who
13 performs clerical or support duties as an employee at the direction
14 of, and subject to the supervision and instruction of, a mortgage
15 loan originator licensed by the state or a registered mortgage loan
16 originator.

17 ~~(e) This section shall become operative on July 31, 2010.~~

18 SEC. 49. Section 50003.6 is added to the Financial Code, to
19 read:

20 50003.6. (a) A loan processor or underwriter who does not
21 represent to the public, through advertising or other means of
22 communicating or providing information, including the use of
23 business cards, stationery, brochures, signs, rate lists, or other
24 promotional items, that the individual can or will perform any of
25 the activities of a loan originator shall not be required to be licensed
26 as a mortgage loan originator.

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

34 (c) An independent contractor may not engage in the activities
35 of a loan processor or underwriter for a residential mortgage loan
36 unless the independent contractor loan processor or underwriter
37 obtains and maintains a mortgage loan originator license under
38 this division. Each independent contractor loan processor or
39 underwriter licensed as a mortgage loan originator shall have and

1 maintain a valid unique identifier issued by the Nationwide
2 Mortgage Licensing System and Registry.

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

4 SEC. 50. Section 50120 of the Financial Code is amended to
5 read:

6 50120. (a) A residential mortgage lender shall file an
7 application for licensure under this chapter with the commissioner
8 to make or service residential mortgage loans in this state.

9 (b) A licensee may not engage in the business as a residential
10 mortgage lender under a name other than the name that appears
11 on the license, or a legally assumed name disclosed either in the
12 application or in an amendment to the application, which shall be
13 reflected on the license.

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

17 (d) The commissioner may, pursuant to Section 50321, order a
18 licensee to cease any other business conducted at any location
19 where the licensee operates under the authority of a residential
20 mortgage lender license, if the commissioner finds that the conduct
21 of that business has facilitated evasions of this division or the rules
22 adopted pursuant to this division, or that the conduct of that
23 business is in violation of any law to which that business is subject.

24 (e) A license issued for a business location outside this state
25 shall constitute an agreement by the licensee to, at the sole
26 discretion of the commissioner, either (1) make the licensee's
27 books, accounts, papers, records, and files available to the
28 commissioner or the commissioner's representatives in this state
29 within 10 calendar days of a request from the commissioner or,
30 (2) pay the reasonable expenses for travel, meals, and lodging of
31 the commissioner or the commissioner's representatives incurred
32 during an investigation or examination made at the licensee's
33 location outside this state.

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

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

39 SEC. 51. Section 50121 of the Financial Code is amended to
40 read:

1 50121. The commissioner shall issue a residential mortgage
2 lender license upon the satisfaction of all of the following:

3 (a) The filing with the commissioner of a complete and executed
4 application for licensure, which may, at the discretion of the
5 commissioner, include background and experience disclosures
6 required by any of the uniform application forms of the Nationwide
7 Mortgage Licensing System and Registry.

8 (b) The payment of a nonrefundable investigation fee of one
9 hundred dollars (\$100), plus the cost of fingerprint processing and
10 clearance, and an application filing fee of nine hundred dollars
11 (\$900).

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

22 ~~(d) The amendments to this section made by the act adding this~~
23 ~~subdivision shall become operative July 31, 2010.~~

24 SEC. 52. Section 50122 of the Financial Code is amended to
25 read:

26 50122. (a) The application for a residential mortgage lender
27 license shall be sworn testimony on a form prescribed by the
28 commissioner, and shall include a notarized signature. If an
29 applicant proposes to engage in business as a residential mortgage
30 loan servicer as well as a residential mortgage lender, this
31 information shall be set forth in the application. The commissioner
32 may issue a license under this chapter to engage in business as a
33 residential mortgage lender or to engage in business as a residential
34 mortgage lender and residential mortgage loan servicer. A person
35 filing an application under this chapter to engage in business as a
36 residential mortgage lender and a residential mortgage loan servicer
37 is not required to file an application under Chapter 3 (commencing
38 with Section 50130).

39 (b) The application shall contain the name and complete business
40 and residential address or addresses of the applicant. If the applicant

1 is a partnership, association, corporation, or other entity, the
2 application shall contain the names and complete business and
3 residential addresses of each member, director, and principal
4 officer. The application also shall include a description of the
5 activities of the applicant in the detail and for the periods that the
6 commissioner may require, including all of the following:

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

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

14 (3) Information as to the character, fitness, financial and business
15 responsibility, background, experience, and criminal convictions
16 of any of the following:

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

19 (B) Any person that controls, directly or indirectly, the election
20 of 25 percent or more of the members of the board of directors of
21 an applicant.

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

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

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

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

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

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

34 SEC. 53. Section 50123 of the Financial Code is amended to
35 read:

36 50123. (a) A residential mortgage lender license shall be
37 renewed annually upon the payment of the annual fee or
38 assessment, and if renewed, shall remain in effect until suspended,
39 surrendered, or revoked.

1 (b) A residential mortgage lender licensee that ceases to engage
2 in the business regulated by this division and desires to no longer
3 be licensed shall inform the commissioner in writing and, at that
4 time, surrender the license and all other indicia of licensure to the
5 commissioner. The licensee shall file a plan for the withdrawal
6 from regulated business, and the plan shall include a timetable for
7 the disposition of the business. The plan shall also include a closing
8 audit, review, or other agreed upon procedures performed by an
9 independent certified public accountant prescribed by rule or order
10 of the commissioner. Upon receipt of the written notice and plan,
11 the commissioner shall review the plan and, if satisfactory to the
12 commissioner, shall accept the surrender of the license. A license
13 is not surrendered until its tender is accepted in writing by the
14 commissioner after a review, and a finding has been made on the
15 licensee's plan required to be filed by this section, and a
16 determination has been made that there is no violation of this law.

17 (c) A residential mortgage lender or servicer licensee may not
18 surrender its license under this division and, under the authority
19 of a real estate license, subsequently engage in residential mortgage
20 lending or servicing activities that are subject to this division,
21 unless the licensee has been licensed under this division for a
22 period of five years or more.

23 (d) The commissioner may, in his or her discretion, require a
24 residential mortgage lender licensee whose license has expired to
25 comply with the requirements for the surrender of a license in this
26 section.

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

29 SEC. 54. Section 50124 of the Financial Code is amended to
30 read:

31 50124. (a) A residential mortgage lender shall do all of the
32 following:

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

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

39 (3) File with the commissioner any report required under law
40 or by rule or order of the commissioner.

1 (4) Disburse funds in accordance with its agreements and to
2 make a good faith and reasonable effort to effect closing in a timely
3 manner.

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

11 (6) File with the commissioner an amendment to its application
12 prior to any material change in the information contained in the
13 application for licensure, including, without limitation, the plan
14 of operation. The commissioner shall, within 20 business days of
15 receiving a completed amendment to the application, or within a
16 longer time if agreed to by the licensee, approve or disapprove the
17 effectiveness of the proposed amendment.

18 (7) Comply with the provisions of this division, and with any
19 order or rule of the commissioner.

20 (8) Submit to periodic examination by the commissioner as
21 required by this division.

22 (9) Advise the commissioner by amendment to its application
23 of any material judgment filed against, or bankruptcy petition filed
24 by, the licensee within five days of the filing.

25 (10) Notify the commissioner, in writing, prior to opening a
26 branch office in this state or changing its business location or
27 locations or its branch offices from which activities subject to this
28 division are conducted.

29 (11) Comply with all applicable state and federal tax return
30 filing requirements.

31 (12) Refrain from committing a crime against the laws of any
32 state or the United States, involving moral turpitude,
33 misrepresentation, fraudulent or dishonest dealing, or fraud, and
34 disclose to the commissioner any final judgment entered against
35 it in a civil action upon grounds or allegations of fraud,
36 misrepresentation, or deceit.

37 (13) Refrain from engaging in conduct that would be cause for
38 denial of a license.

39 (14) Remain solvent.

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

3 (16) Comply with any other requirement established by rule of
4 the commissioner.

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

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

9 SEC. 55. Section 50125 of the Financial Code is amended to
10 read:

11 50125. ~~(a)~~ The commissioner may refuse to issue a residential
12 mortgage lender license if any of the following apply:

13 ~~(1)~~

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

16 ~~(2)~~

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

19 ~~(3)~~

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

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

24 SEC. 56. Section 50126 of the Financial Code is amended to
25 read:

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

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

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

39 (3) The applicant or any officer, director, general partner, 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, including the receipt
11 of background and investigative reports from the Department of
12 Justice or other government agencies, and the payment of the fees
13 required by Section 50121, issue either a residential mortgage
14 lender license or a statement of issues prepared in accordance with
15 Chapter 5 (commencing with Section 11500) of Part 1 of Division
16 3 of Title 2 of the Government Code.

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

19 SEC. 57. Section 50127 of the Financial Code is amended to
20 read:

21 50127. ~~(a)~~ The proceedings for a denial of a residential
22 mortgage lender license shall be conducted in accordance with
23 Chapter 5 (commencing with Section 11500) of Part 1 of Division
24 3 of Title 2 of the Government Code, and the commissioner has
25 all the powers granted therein.

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

28 SEC. 58. Section 50128 of the Financial Code is amended to
29 read:

30 50128. ~~(a)~~ As used in this act, the term “principal officer”
31 means an officer with direct responsibility for the conduct of the
32 residential mortgage lender licensee’s or license applicant’s lending
33 or servicing activities in this state.

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

36 SEC. 59. Section 50129 of the Financial Code is amended to
37 read:

38 50129. (a) A residential mortgage lender licensed under this
39 chapter may, under the authority of that license and subject to the
40 provisions of this division, do both of the following:

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

4 (2) Engage, pursuant to a written agency contract with an
5 institutional lender specified in paragraph (1), (2), or (4) of
6 subdivision (k) of Section 50003, in the business of soliciting,
7 processing applications, or applying residential loan underwriting
8 criteria, but not engage in the business of brokerage services
9 pursuant to this subdivision, for residential mortgage loans for that
10 lender, using or advancing the funds of that lender, provided that
11 no fees or charges may be demanded or collected by the residential
12 mortgage lender licensee for any performance or service, except
13 fees demanded by, or collected on behalf of, the institutional lender,
14 and that the licensee gives a written disclosure to the borrower, as
15 soon as practicable but prior to loan closing, identifying the
16 licensee and stating that the licensee is not the lender in the
17 transaction but has contracted to provide soliciting, processing, or
18 underwriting services for the lender. Separate schedules of the
19 number and principal amount of the loans processed and
20 underwritten shall be included in the licensee's annual report
21 required by subdivision (a) of Section 50401.

22 (b) The act of soliciting other institutional lenders with whom
23 a residential mortgage lender licensee has concluded an agency
24 contract pursuant to paragraph (2) of subdivision (a) for placement
25 of a loan upon declination of that loan by another institutional
26 lender contracted under paragraph (2) of subdivision (a), constitutes
27 brokerage services, and may be pursued by the licensee only
28 following execution of a loan brokerage agreement with the
29 borrower as provided in this division.

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

32 SEC. 60. Section 50130 of the Financial Code is amended to
33 read:

34 50130. (a) A mortgage servicer shall file an application for
35 licensure under this chapter with the commissioner to service
36 mortgage loans in this state by satisfying the requirements of this
37 chapter and the applicable provisions, as determined by the
38 commissioner, of Chapter 2 (commencing with Section 50120).

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

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

4 (2) Paying the investigation and application fees required by
5 Section 50121.

6 (3) Submitting any information required by Section 50124.

7 (4) Complying with the applicable provisions of Chapter 2
8 (commencing with Section 50120).

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

12 (d) The commissioner may, pursuant to Section 50321, order a
13 licensee to cease any other business conducted at any location
14 where the licensee operates under the authority of a residential
15 mortgage servicer license, if the commissioner finds that the
16 conduct of that business has facilitated evasions of this division
17 or the rules adopted pursuant to this division, or that the conduct
18 of that business is in violation of any law to which that business
19 is subject.

20 (e) A license for a business location outside this state shall
21 constitute an agreement by the mortgage servicer to, at the
22 discretion of the commissioner, either (1) make the licensee's
23 books, accounts, papers, records, and files available to the
24 commissioner or the commissioner's representatives in this state
25 within 10 calendar days of a request from the commissioner or,
26 (2) pay the reasonable expenses for travel, meals, and lodging of
27 the commissioner or the commissioner's representatives incurred
28 during an investigation or examination made at the licensee's
29 location outside this state.

30 (f) The commissioner shall license a mortgage servicer upon
31 completion of the investigation and issuance of the findings
32 required by Section 50121, subject to Sections 50123, 50125,
33 50126, and 50127.

34 (g) A mortgage servicer licensed to service mortgage loans shall
35 comply with all applicable requirements of California and federal
36 law, including the Civil Code and Section 2609 of the *federal* Real
37 Estate Settlement Procedures Act of 1974, as amended (12
38 ~~U.S.C.A.~~ *U.S.C.* Sec. 2601 et seq.).

1 (h) If renewed through the payment of the annual assessment
 2 or fee, a license shall remain in effect until suspended, surrendered,
 3 or revoked.

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

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

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

11

12 CHAPTER 3.5. MORTGAGE LOAN ORIGINATORS

13

14 50140. (a) Applicants for a mortgage loan originator license
 15 shall apply in a form as prescribed by the commissioner. Each
 16 form shall contain content as set forth by rule, regulation,
 17 instruction, or procedure of the commissioner and may be changed
 18 or updated as necessary by the commissioner in order to carry out
 19 the purposes of this division.

20 *(b) Section 461 of the Business and Professions Code shall not*
 21 *be applicable to the Department of Corporations when using a*
 22 *national uniform application adopted or approved for use by the*
 23 *Nationwide Mortgage Licensing System and Registry in connection*
 24 *with the SAFE Act.*

25 ~~(b)~~

26 (c) In connection with an application for a license as a mortgage
 27 loan originator, the applicant shall, at a minimum, furnish to the
 28 Nationwide Mortgage Licensing System and Registry information
 29 concerning the applicant's identity, including the following:

30 ~~(1) Fingerprints or fingerprint images-Fingerprint images and~~
 31 ~~related information,~~ for purposes of performing a federal, or both
 32 a state and federal, criminal history background check.

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

38 (A) An independent credit report obtained from a consumer
 39 reporting agency.

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

3 (d) *The commissioner may ask the Nationwide Mortgage*
4 *Licensing System and Registry to obtain state criminal history*
5 *background check information on applicants described in*
6 *subdivision (a) using the procedures set forth in subdivisions (e)*
7 *and (f).*

8 (e)

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

22 (d)

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

29 (e)

30 (g) The Department of Justice shall charge a fee sufficient to
31 cover the cost of processing the requests described in this section.

32 50141. The commissioner shall not issue a mortgage loan
33 originator license unless the commissioner makes at a minimum
34 the following findings:

35 (a) The applicant has never had a mortgage loan originator
36 license revoked in any governmental jurisdiction, except that a
37 subsequent formal vacation or set aside of such revocation shall
38 not be deemed a revocation.

39 (b) The applicant has not been convicted of, or pled guilty or
40 nolo contendere to, a felony in a domestic, foreign, or military

1 court during the seven-year period preceding the date of the
2 application for licensing and registration, or at any time preceding
3 the date of application, if such felony involved an act of fraud,
4 dishonesty, a breach of trust, or money laundering. For purposes
5 of this subdivision, any pardon of a conviction shall not constitute
6 a conviction.

7 (c) The applicant has demonstrated such financial responsibility,
8 character, and general fitness as to command the confidence of
9 the community and to warrant a determination that the mortgage
10 loan originator will operate honestly, fairly, and efficiently within
11 the purposes of this division.

12 (d) The applicant has completed the prelicensing education
13 requirement described in Section 50142.

14 (e) The applicant has passed a written test that meets the test
15 requirements described in Section 50143.

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

19 50142. (a) An applicant for a mortgage loan originator license
20 shall complete at least 20 hours of education approved in
21 accordance with subdivision (b). The education shall include at
22 least the following:

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

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

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

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

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

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

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

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

12 50143. (a) An applicant for a mortgage loan originator license
13 shall pass a qualified written test developed by the Nationwide
14 Mortgage Licensing System and Registry and administered by a
15 test provider approved by the Nationwide Mortgage Licensing
16 System and Registry.

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

21 (1) Ethics.

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

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

24 (4) Federal and state law and regulation, including instruction
25 on fraud, consumer protection, the nontraditional mortgage
26 marketplace, and fair lending issues.

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

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

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

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

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

7 50144. (a) A mortgage loan originator shall comply with the
8 requirements of this section on or before December 31 of every
9 year.

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

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

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

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

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

25 50145. (a) A licensed mortgage loan originator shall complete
26 at least eight hours of continuing education approved in accordance
27 with subdivision (b). The continuing education shall include at
28 least the following:

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

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

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

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

39 (c) Nothing in this section shall preclude any education course
40 approved by the Nationwide Mortgage Licensing System and

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

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

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

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

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

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

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

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

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

33 50146. In addition to any other duties imposed upon the
34 commissioner by law, the commissioner shall require mortgage
35 loan originators to be licensed and registered through the
36 Nationwide Mortgage Licensing System and Registry. In order to
37 carry out this requirement the commissioner is authorized to
38 participate in the Nationwide Mortgage Licensing System and
39 Registry. For this purpose, the commissioner may establish by

1 rule, regulation, or order, requirements as necessary, including,
 2 but not limited to, the following:

- 3 (a) Background checks for:
 - 4 (1) Criminal history through fingerprint or other databases.
 - 5 (2) Civil or administrative records.
 - 6 (3) Credit history.
 - 7 (4) Any other information as deemed necessary by the
 - 8 Nationwide Mortgage Licensing System and Registry.

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

11 (c) The setting or resetting as necessary of renewal or reporting
 12 dates.

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

17 ~~50147. This chapter shall become operative on July 31, 2010.~~

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

20

21 CHAPTER 3.6. NATIONWIDE MORTGAGE LICENSING SYSTEM
 22 AND REGISTRY

23

24 50150. (a) The commissioner is authorized to establish
 25 relationships or contracts with the Nationwide Mortgage Licensing
 26 System and Registry or other entities designated by the Nationwide
 27 Mortgage Licensing System and Registry to collect and maintain
 28 records and process transaction fees or other fees related to
 29 licensees or other persons subject to this division.

30 (b) For the purpose of participating in the Nationwide Mortgage
 31 Licensing System and Registry, the commissioner is authorized
 32 to waive or modify, in whole or in part, by rule, regulation, or
 33 order, any or all of the requirements of this division and to establish
 34 new requirements as reasonably necessary to participate in the
 35 Nationwide Mortgage Licensing System and Registry.

36 (c) The commissioner may use the Nationwide Mortgage
 37 Licensing System and Registry as a channeling agent for requesting
 38 information from, and distributing information to, the Department
 39 of Justice or any governmental agency.

1 (d) The commissioner may use the Nationwide Mortgage
2 Licensing System and Registry as a channeling agent for requesting
3 and distributing information to and from any source so directed
4 by the commissioner.

5 (e) The commissioner shall establish a process where applicants
6 and licensees may challenge information entered into the
7 Nationwide Mortgage Licensing System and Registry by the
8 commissioner.

9 50151. (a) Except as otherwise provided in Section 1512 of
10 the SAFE Act, the requirements under any federal law or the
11 Information Practices Act (Chapter 1 (commencing with Section
12 1798) of Part 4 of Division 3 of the Civil Code) regarding the
13 privacy or confidentiality of any information or material provided
14 to the Nationwide Mortgage Licensing System and Registry, and
15 any privilege arising under federal or state law, including the rules
16 of any federal or state court, with respect to that information or
17 material, shall continue to apply to the information or material
18 after the information or material has been disclosed to the
19 Nationwide Mortgage Licensing System and Registry. The
20 information and material may be shared with all state and federal
21 regulatory officials with mortgage industry oversight authority
22 without the loss of privilege or the loss of confidentiality
23 protections provided by federal law or the Information Practices
24 Act.

25 (b) Information or material that is subject to a privilege or
26 confidentiality under subdivision (a) shall not be subject to the
27 following:

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

31 (2) Subpoena or discovery, or admission into evidence, in any
32 private civil action or administrative process, unless with respect
33 to any privilege held by the Nationwide Mortgage Licensing
34 System and Registry with respect to the information or material,
35 the person to whom the information or material pertains waives,
36 in whole or in part, in the discretion of that person, that privilege.

37 (c) This section shall not apply with respect to the information
38 or material relating to the employment history of, and publicly
39 adjudicated disciplinary and enforcement actions against, mortgage

1 loan originators that is included in the Nationwide Mortgage
2 Licensing System and Registry for access by the public.

3 50152. The commissioner shall report regularly violations of
4 this division, as well as enforcement actions and other relevant
5 information, to the Nationwide Mortgage Licensing System and
6 Registry, to the extent that information is public record.

7 ~~50153. This chapter shall become operative on July 31, 2010.~~

8 SEC. 63. Section 50200 of the Financial Code is amended to
9 read:

10 50200. (a) At the end of the licensee's fiscal year, but in no
11 case more than 12 months after the last audit conducted pursuant
12 to this section, each licensed residential mortgage lender or servicer
13 shall cause its books and accounts to be audited by an independent
14 certified public accountant. Beginning with all audits of business
15 conducted after December 31, 1995, the audit shall be sufficiently
16 comprehensive in scope to permit the expression of an opinion on
17 the financial statements prepared in accordance with generally
18 accepted accounting principles and shall be performed in
19 accordance with generally accepted auditing standards. The audit
20 shall include a reconciliation of the licensee's trust accounts as of
21 the audit date.

22 (b) "Expression of an opinion" includes (1) an unqualified
23 opinion, (2) a qualified opinion, (3) a disclaimer of opinion, or (4)
24 an adverse opinion. If a financial statement, report, certificate, or
25 opinion of the independent certified public accountant is in any
26 way qualified, the commissioner may require the licensee to take
27 any action that the commissioner deems appropriate to address the
28 qualification. The commissioner may reject any financial statement,
29 report, certificate, or opinion by notifying the licensee or other
30 person required to make the filing of the rejection and the reason
31 therefor. Within 30 days after the receipt of the notice, the licensee
32 or other person shall correct the deficiencies. Failure to correct the
33 deficiencies is a violation of this division. The commissioner shall
34 retain a copy of all financial statements, reports, certificates, or
35 opinions so rejected.

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

38 (d) The audit report shall be filed with the commissioner within
39 105 days of the end of the licensee's fiscal year. The report filed
40 with the commissioner shall be certified by the certified public

1 accountant conducting the audit. The commissioner may
2 promulgate rules regarding late audit reports.

3 (e) If a licensee required to make an audit fails to cause an audit
4 to be made, the commissioner may cause the audit to be made by
5 an independent certified public accountant at the licensee's
6 expense. The commissioner shall select the independent certified
7 public accountant by advertising for bids or by other fair and
8 impartial means that the commissioner establishes by rule. The
9 commissioner may summarily revoke the license of a licensee who
10 fails to file a certified financial statement prepared by an
11 independent certified public accountant as required by this division
12 or at the request of the commissioner.

13 (f) Audits conducted in accordance with the uniform single audit
14 procedures of the United States Department of Housing and Urban
15 Development may be submitted in fulfillment of the requirements
16 of this section.

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

19 SEC. 64. Section 50201 of the Financial Code is amended to
20 read:

21 50201. (a) A licensee issued a license for purposes of making
22 or servicing residential mortgage loans, including a licensee
23 employing one or more mortgage loan originators, shall
24 continuously maintain a minimum tangible net worth at all times
25 of two hundred fifty thousand dollars (\$250,000).

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

28 (c) The commissioner may promulgate rules or regulations with
29 respect to the requirements for minimum net worth, as are
30 necessary to accomplish the purposes of this division and comply
31 with the SAFE Act.

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

34 SEC. 65. Section 50202 of the Financial Code is amended to
35 read:

36 50202. (a) Escrow funds for a purpose authorized by the
37 residential mortgage loan contract (1) shall be subject to and satisfy
38 all applicable state and federal requirements, including Section
39 2609 of the *federal* Real Estate Settlement Procedures Act of 1974,
40 as amended (12 U.S.C. Sec. 2601 et seq.) and all applicable

1 provisions of the Civil Code, (2) shall be maintained in a depository
2 institution as described in subdivision (b), and (3) may not be
3 commingled with a licensee's funds.

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

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

11 (2) Refunds to the borrower.

12 (3) Transfer to another institution that is described in this
13 subdivision.

14 (4) Forwarding to the appropriate servicer in case of a transfer
15 of servicing.

16 (5) Any other purpose authorized by the residential mortgage
17 loan contract.

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

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

23 (d) Notwithstanding any other provision of law, but subject to
24 the limitations of Section 854, benefits accruing from the placement
25 in a non-interest-bearing account of a commercial bank (including
26 a national banking association) of funds received by a licensee
27 who services mortgage loans under this law, shall inure to the
28 licensee, unless otherwise agreed in writing by the licensee and
29 the investor on whose behalf the licensee services the loan. A
30 borrower shall receive at least 2 percent simple interest per annum
31 on impound account payments covered by Section 2954.8 of the
32 Civil Code.

33 (e) Trust funds are not subject to the enforcement of a money
34 judgment arising out of a claim against the licensee or person
35 acting as the servicing agent, and in no instance shall the trust
36 funds be considered or treated as an asset of the licensee or person
37 performing the functions of a residential mortgage lender or loan
38 servicer.

39 (f) A licensee may, at the request of the owner of the trust funds,
40 transfer the funds initially deposited in a non-interest-bearing trust

1 account into an interest-bearing account in a federally insured
2 depository institution if all of the following requirements are met:

3 (1) The account is in the name of the residential mortgage lender
4 licensee in trust for the specified beneficiary.

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

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

9 (4) The licensee discloses to the person from whom the funds
10 are received and the beneficiary of the account how interest will
11 be calculated and paid, whether service charges will be paid to the
12 depository and by whom, and possible notice requirements or
13 penalties for withdrawal of funds from the account.

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

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

18 SEC. 66. Section 50205 of the Financial Code is amended to
19 read:

20 50205. (a) A residential mortgage lender or servicer licensee
21 shall maintain a surety bond in accordance with this subdivision.
22 The bond shall be used for the recovery of expenses, fines, and
23 fees levied by the commissioner in accordance with this division
24 or for losses or damages incurred by borrowers or consumers as
25 the result of a licensee's noncompliance with the requirements of
26 this division. The bond shall be payable when the licensee fails to
27 comply with a provision of this division and shall be in the amount
28 of fifty thousand dollars (\$50,000), and may be increased by order
29 of the commissioner to one hundred thousand dollars (\$100,000)
30 upon a determination by the commissioner that the licensee is not
31 in compliance with any provision of this chapter or any rule or
32 order adopted or issued by the commissioner to implement or
33 enforce provisions of this chapter. The bond shall be payable to
34 the commissioner and issued by an insurance company authorized
35 to do business in this state. An original surety bond, including any
36 and all riders and endorsements executed subsequent to the
37 effective date of the bond, shall be filed with the commissioner
38 within 10 days of its execution.

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

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

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

8 SEC. 67. Section 50206 of the Financial Code is amended to
9 read:

10 50206. (a) Prior to a change of control of the business of a
11 licensee, the person wishing to acquire control shall submit an
12 application to the commissioner and pay an investigation fee of
13 one hundred dollars (\$100). The application shall contain the
14 information that the commissioner, by rule, may prescribe as
15 necessary to determine that the person meets the requirements of
16 Section 50121.

17 (b) The commissioner shall approve or disapprove the proposed
18 change of control of a licensee in accordance with the provisions
19 of Section 50126.

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

23 ~~(d) The amendments to this section made by the act adding this~~
24 ~~subdivision shall become operative July 31, 2010.~~

25 SEC. 68. Section 50208 of the Financial Code is amended to
26 read:

27 50208. ~~(a)~~ The license shall state the name of the licensee. If
28 the licensee is a partnership, the license shall state the names of
29 its general partners. If the licensee is a corporation or an
30 association, the license shall state the date and place of the
31 corporation's incorporation or organization. If the licensee is a
32 residential mortgage lender or servicer, the license shall state the
33 address of the licensee's principal business location. The license
34 shall state whether the licensee is licensed as a residential mortgage
35 loan lender or servicer or as a mortgage loan originator.

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

38 SEC. 69. Section 50209 is added to the Financial Code, to read:

39 50209. ~~(a)~~ The unique identifier of any licensed mortgage loan
40 originator shall be clearly shown on all residential mortgage loan

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

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

5 SEC. 70. Section 50302 of the Financial Code is amended to
6 read:

7 50302. (a) As often as the commissioner deems necessary and
8 appropriate, but at least once every 48 months, the commissioner
9 shall examine the affairs of each residential mortgage lender and
10 servicer licensee for compliance with this division. The
11 commissioner shall appoint suitable persons to perform the
12 examination. The commissioner and his or her appointees may
13 examine the books, records, and documents of the licensee, and
14 may examine the licensee's officers, directors, employees, or agents
15 under oath regarding the licensee's operations. The commissioner
16 may cooperate with any agency of the state or federal government,
17 other states, agencies, the federal national mortgage association,
18 or the federal home loan mortgage corporation. The commissioner
19 may accept an examination conducted by one of these entities in
20 place of an examination by the commissioner under this law, unless
21 the commissioner determines that the examination does not provide
22 information necessary to enable the commissioner to fulfill his or
23 her responsibilities under this division.

24 (b) The commissioner shall provide a written statement of the
25 findings of the examination, issue a copy of that statement to each
26 licensee's principals, officers, or directors, and take appropriate
27 steps to ensure correction of any violations of this division.

28 (c) Affiliates of a licensee are subject to examination by the
29 commissioner on the same terms as the licensee, but only when
30 reports from, or examination of, a licensee provides documented
31 evidence of unlawful activity between a licensee and affiliate
32 benefiting, affecting, or arising from the activities regulated by
33 this division.

34 (d) The residential mortgage lender or ~~servicer~~ *servicer*
35 *licensee* shall pay, and the commissioner shall assess, the
36 reasonable expenses of any examination of the licensee and
37 affiliates, consistent with the requirements of subdivision (c) of
38 Section 50314.

39 (e) The statement of the findings of an examination shall belong
40 to the commissioner and shall not be disclosed to anyone other

1 than the licensee, law enforcement officials, or other state or federal
2 regulatory agencies for further investigation and enforcement.
3 Reports required of licensees by the commissioner under this
4 division and results of examinations performed by the
5 commissioner under this division are the property of the
6 commissioner.

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

9 SEC. 71. Section 50307 of the Financial Code is amended to
10 read:

11 50307. (a) Each residential mortgage lender or servicer licensee
12 shall file a report with the commissioner annually, on or before
13 the first day of March, giving the relevant information that the
14 commissioner reasonably requires to make the calculation required
15 by subdivision (a) of Section 50401. The report shall be made
16 under oath and in the form prescribed by the commissioner.

17 (b) A licensee shall make any other special reports to the
18 commissioner that the commissioner may, from time to time,
19 require.

20 (c) If any licensed residential mortgage lender or servicer subject
21 to this division fails to make a report required by law or by the
22 commissioner, the commissioner may immediately cause the books,
23 records, papers, and affairs of that licensee to be thoroughly
24 examined.

25 ~~(d) The amendments to this section made by the act adding this~~
26 ~~subdivision shall become operative July 31, 2010.~~

27 SEC. 72. Section 50307.2 is added to the Financial Code, to
28 read:

29 50307.2. ~~(a)~~The commissioner may require a licensee that
30 employs one or more mortgage loan originators to submit to the
31 Nationwide Mortgage Licensing System and Registry reports of
32 condition, which shall be in such form and shall contain such
33 information as the Nationwide Mortgage Licensing System and
34 Registry may require.

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

36 SEC. 73. Section 50317 of the Financial Code is amended to
37 read:

38 50317. (a) Any person who has been convicted of, or pleaded
39 nolo contendere to any crime specified in subdivision (b) within
40 the past 10 years or has been held liable in any civil action by final

1 judgment or any administrative judgment by any public agency
2 within the past seven years, of any of the provisions specified in
3 subdivision (b), shall not serve as an officer, director, partner,
4 shareholder controlling 10 percent or more of the ownership
5 interests, trustee, or employee of a residential mortgage lender or
6 residential mortgage loan servicer. This subdivision shall not apply
7 to any person whose office, employment, ownership interest, or
8 other participation in the business of a licensed residential mortgage
9 lender or residential mortgage loan servicer commenced prior to
10 January 1, 1995, or whose criminal conviction, plea, or judgment
11 occurred prior to January 1, 1995.

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

15 (1) Offenses specified in Chapter 18 (commencing with Section
16 3350) of Division 1.

17 (2) Offenses specified in Article 4 (commencing with Section
18 5300) of Chapter 1 of Division 2.

19 (3) Offenses specified in Article 8 (commencing with Section
20 14750) of Chapter 4 of Division 5.

21 (4) Offenses specified in Chapter 7 (commencing with Section
22 17700) of Division 6.

23 (5) Offenses specified in Chapter 6 (commencing with Section
24 18435) of Division 7.

25 (6) Offenses specified in provisions of the laws of the United
26 States added or amended by the federal Financial Institutions
27 Reform, Recovery and Enforcement Act of 1989 (Public Law
28 101-73).

29 (7) Offenses involving robbery, burglary, theft, embezzlement,
30 fraud, fraudulent conversion or misappropriation of property,
31 forgery, bookmaking, receiving stolen property, counterfeiting,
32 extortion, checks, credit cards, or computer violations specified
33 in Section 502 of the Penal Code. For the purpose of this section,
34 but not Section 50318, an offense does not include a conviction
35 for which the person has obtained a certificate of rehabilitation
36 from a court of competent jurisdiction under Section 1203.4 or
37 4852.13 of the Penal Code or a similar certificate of rehabilitation
38 obtained in a foreign jurisdiction.

39 (c) On and after January 1, 1995, any officer, director, or other
40 person who seeks a controlling ownership interest of 10 percent

1 or more in the business of a licensed residential mortgage lender
2 or residential mortgage loan servicer shall, as a condition to
3 obtaining that interest or participation, authorize the commissioner
4 to have access to that person's state summary criminal history
5 information, as defined in Section 11105 of the Penal Code, for
6 purposes of determining whether the person has a prior conviction
7 of, or pleaded nolo contendere to, a criminal offense specified in
8 subdivision (b).

9 (d) Any state summary criminal history information obtained
10 pursuant to this section shall be kept confidential and no recipient
11 shall disclose the contents other than for the purpose of acquisition
12 of an ownership interest in or other participation in the business
13 of a licensed residential mortgage lender or residential mortgage
14 loan servicer.

15 (e) Any person who knowingly violates subdivision (a),
16 including, but not limited to, any residential mortgage lender or
17 residential mortgage loan servicer who permits an ownership
18 interest in or other participation in the business of a residential
19 mortgage lender or residential mortgage loan servicer in violation
20 of subdivision (a) shall, upon conviction, be subject to punishment
21 as set forth in Section 50500.

22 (f) Nothing in this section shall be construed to permit the
23 reinstatement of any person barred by the commissioner pursuant
24 to Section 50320 nor to prohibit the commissioner from bringing
25 any action pursuant to Section 50320.

26 (g) If any provision of this section or the application of this
27 section to any person or circumstances is held invalid, that
28 invalidity shall not affect other provisions or applications of this
29 section that can be given effect without the invalid provision or
30 application, and to this end the provisions of this section are
31 severable.

32 (h) For purposes of this section, the term "employee" means
33 (1) a mortgage loan originator, including a loan officer or other
34 individual who negotiates agreements with the public, or (2) an
35 individual with access to or responsibility for trust funds held by
36 the licensee.

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

39 SEC. 74. Section 50318 of the Financial Code is amended to
40 read:

1 50318. (a) The commissioner may, after appropriate notice
2 and opportunity for hearing, by order censure or suspend for a
3 period not exceeding 12 months, or bar from any position of
4 employment, management, or control any residential mortgage
5 lender, residential mortgage loan servicer, or mortgage loan
6 originator, or any other person, if the commissioner finds either
7 of the following:

8 (1) That the censure, suspension, or bar is in the public interest
9 and that the person has committed or caused a violation of this
10 division or rule or order of the commissioner, and (A) the violation
11 was either known or should have been known by the person
12 committing or causing it, or (B) the violation has caused material
13 damage to the residential mortgage lender, residential mortgage
14 loan servicer, mortgage loan originator, or to the public.

15 (2) That the person (A) has been convicted of or pleaded nolo
16 contendere to any crime, or (B) has been held liable in any civil
17 action by final judgment, or any administrative judgment by any
18 public agency, if that crime or civil or administrative judgment
19 involved any offense specified in subdivision (b) of Section 50317,
20 or any other offense reasonably related to the qualifications,
21 functions, or duties of a person engaged in the business in
22 accordance with the provisions of this division.

23 (b) Within 15 days from the date of a notice of intention to issue
24 an order pursuant to subdivision (a), the person may request a
25 hearing under the Administrative Procedure Act (Chapter 5
26 commencing with Section 11500) of Part 1 of Division 3 of Title
27 2 of the Government Code). Upon receiving a request, the matter
28 shall be set for hearing to commence within 30 days after receipt
29 unless the person subject to this division consents to a later date.
30 If no hearing is requested within 15 days after the mailing or
31 service of the notice and none is ordered by the commissioner, the
32 failure to request a hearing shall constitute a waiver of the right to
33 a hearing.

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

38 (d) Persons suspended or barred under this section are prohibited
39 from participating in any business activity of a licensed residential
40 mortgage lender, residential mortgage loan servicer, or mortgage

1 loan originator and from engaging in any business activity on the
2 premises where a licensed residential mortgage lender, residential
3 mortgage loan servicer, or mortgage loan originator is conducting
4 its business. This subdivision shall not be construed to prohibit
5 suspended or barred persons from having their personal transactions
6 processed by a licensed residential mortgage lender, residential
7 mortgage loan servicer, or mortgage loan originator.

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

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

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

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

23 SEC. 75. Section 50320 of the Financial Code is amended to
24 read:

25 50320. ~~(a)~~ Whenever, in the opinion of the commissioner, a
26 person is engaged, either actually or through subterfuge, in the
27 business of making residential mortgage loans, servicing residential
28 mortgage loans, or engaging in business as a mortgage loan
29 originator, without a license from the commissioner, the
30 commissioner may order that person to desist and refrain. If, within
31 30 days after an order is served, a request for a hearing is filed in
32 writing and the hearing is not held within 60 days of the filing, the
33 order is rescinded. This section does not apply to persons exempted
34 under subdivision (b) of Section 50002.

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

37 SEC. 76. Section 50325 of the Financial Code is amended to
38 read:

39 50325. ~~(a)~~ The commissioner may immediately revoke the
40 residential mortgage lender’s, residential mortgage loan servicer’s,

1 or mortgage loan originator's license if the licensee fails to comply
2 with any order issued under Section 50318, 50319, 50321, 50322,
3 or 50503. The commissioner shall not revoke the license if, within
4 10 days from the effective date of the revocation order, the licensee
5 secures a court order restraining the enforcement of the
6 commissioner's revocation order.

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

9 SEC. 77. Section 50328 of the Financial Code is amended to
10 read:

11 50328. ~~(a)~~ Except in the case of an exempt person, whenever
12 the commissioner deems it to be necessary for the public interest,
13 the commissioner has continuous authority to exercise the powers
14 set forth in this division. These powers may be exercised whether
15 or not an application for a license has been filed with the
16 commissioner, any license has been issued, or if issued, has been
17 surrendered, suspended, or revoked, or has expired.

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

20 SEC. 78. Section 50333 of the Financial Code is amended to
21 read:

22 50333. (a) The commissioner shall apply the guidance on
23 nontraditional mortgage product risks published on November 14,
24 2006, by the Conference of State Bank Supervisors and the
25 American Association of Residential Mortgage Regulators, and
26 the Statement on Subprime Mortgage Lending published on July
27 17, 2007, by the aforementioned entities and the National
28 Association of Consumer Credit Administrators, to licensees.

29 (b) The commissioner may adopt emergency and final rules to
30 clarify the application of this section as soon as possible.

31 (c) A licensee shall adopt and adhere to policies and procedures
32 that are reasonably intended to achieve the objectives set forth in
33 the documents described in subdivision (a). A licensed mortgage
34 loan originator shall adhere to policies and procedures developed
35 by his or her employer in accordance with this division and
36 applicable federal law and regulation.

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

39 SEC. 79. Section 50401 of the Financial Code is amended to
40 read:

1 50401. (a) In addition to other fees and reimbursements
2 required to be paid under this division, each residential mortgage
3 lender or servicer licensee shall pay to the commissioner an amount
4 equal to the lesser of: (1) its pro rata share of all costs and expenses
5 (including overhead and the maintenance of a prudent reserve not
6 to exceed 90 days' costs and expenses) that the commissioner
7 reasonably expects to incur in the current fiscal year in the
8 administration of this division and not otherwise recovered by the
9 commissioner under this division or from the State Corporations
10 Fund, plus a deficit or less a surplus actually incurred during the
11 prior fiscal year; or (2) five thousand dollars (\$5,000). The pro
12 rata share shall be the greater of either one thousand dollars
13 (\$1,000) or the sum of: (A) a number derived from the ratio of the
14 aggregate principal amount of the mortgage loans secured by
15 residential real property originated by the licensee to all mortgage
16 loans secured by residential real property originated by all licensees
17 under this division, as shown by the annual financial reports to the
18 commissioner, which number is then multiplied by one-half of the
19 costs and expenses estimated by the commissioner for the current
20 fiscal year; plus (B) a number derived from the ratio of the average
21 value of mortgage loans secured by residential real property
22 serviced by a licensee to the average value of all mortgage loans
23 secured by residential real property serviced by all licensees under
24 this division, as shown by the annual financial reports to the
25 commissioner, which number is then multiplied by one-half of the
26 costs and expenses estimated by the commissioner for the current
27 fiscal year. For the purposes of this section, the "principal amount"
28 of a mortgage loan means the initial total amount a borrower is
29 obligated to repay the lender and the "average value" of loans
30 serviced means the sum of the aggregate dollar value of all
31 mortgage loans secured by residential real property serviced by a
32 licensee, calculated as of the last day of each month in the calendar
33 year just ended, divided by 12.

34 In order for the commissioner to calculate the assessment under
35 this section, each residential mortgage lender and servicer licensee
36 shall file an annual report for the calendar year just ended
37 containing the information required by the commissioner on or
38 before March 1 of the year in which the assessment is to be
39 calculated.

1 In determining the amount assessed, the commissioner shall
2 consider all appropriations from the State Corporations Fund for
3 the support of this division and all reimbursements provided for
4 under this division.

5 (b) In no case shall the reimbursement, payment, or other fee
6 authorized by this section exceed the cost, including overhead,
7 reasonably incurred in the administration of this division, and the
8 maintenance of a prudent reserve not to exceed 90 days' costs and
9 expenses.

10 (c) On or before the 30th day of November in each year, the
11 commissioner shall notify each residential mortgage lender and
12 servicer licensee by mail of the amount assessed and levied against
13 it and that amount shall be paid by December 31. If payment is
14 not made by December 31, the commissioner shall assess and
15 collect a penalty, in addition to the assessment of 1 percent of the
16 assessment for each month or part of a month that the payment is
17 delayed or withheld.

18 (d) If a licensee fails to pay the assessment on or before the 31st
19 day of January following the day upon which payment is due, the
20 commissioner may by order summarily suspend or revoke the
21 license issued to the licensee. An order issued under this section
22 is not stayed by the filing of a request for a hearing. If, after an
23 order is made, the request for hearing is filed in writing within 15
24 days from the date of service of the order and a hearing is not held
25 within 60 days of the filing, the order is deemed rescinded as of
26 its effective date. During a period when its license is revoked or
27 suspended, a residential mortgage lender and servicer licensee and
28 any mortgage loan originator employed by the residential mortgage
29 lender or servicer shall not conduct business pursuant to this
30 division except as may be permitted by further order of the
31 commissioner. However, the revocation, suspension, or surrender
32 of a license shall not affect the powers of the commissioner as
33 provided in this division.

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

36 SEC. 80. Section 50601 of the Financial Code is repealed.

37 SEC. 81. Section 50602 of the Financial Code is repealed.

38 SEC. 82. Section 50700 of the Financial Code is amended to
39 read:

1 50700. (a) A residential mortgage lender, or a person or
2 employee acting under the authority of a residential mortgage
3 lender's license, including a mortgage loan originator, shall not
4 provide brokerage services to a borrower, except as provided in
5 subdivision (c).

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

7 (1) Obtaining or attempting to obtain, on behalf of a borrower,
8 a residential mortgage loan, as defined in subdivision (p) of Section
9 50003, secured by residential real estate, as defined in subdivision
10 (w) of Section 50003, made with the funds of another institutional
11 lender, as defined in paragraphs (1), (2), and (4) of subdivision (k)
12 of Section 50003, and closed in the name of that lender, for a fee
13 paid by the borrower or the institutional lender.

14 (2) Obtaining or attempting to obtain, on behalf of a borrower,
15 a residential mortgage loan, as defined in subdivision (p) of Section
16 50003, secured by residential real estate, as defined in subdivision
17 (w) of Section 50003, made with the funds of another institutional
18 lender, as defined in paragraphs (1), (2), and (4) of subdivision (k)
19 of Section 50003, but closed in the name of the licensee, for a fee
20 paid by the borrower or the institutional lender.

21 (c) A residential mortgage lender or a mortgage loan originator
22 employed by a residential mortgage lender may provide brokerage
23 services under the authority of the lender's license, if the lender
24 first enters into a written brokerage agreement with the borrower
25 that satisfies the requirements of Section 50701.

26 (d) This chapter does not authorize a residential mortgage lender
27 licensee to do any of the following:

28 (1) Provide brokerage services through independent contractors.

29 (2) Obtain or attempt to obtain for a borrower a residential
30 mortgage loan that is a "high cost mortgage," referred to in Section
31 152(aa)(1) of the *federal* Home Ownership and Equity Protection
32 Act of 1994, as amended (15 U.S.C. Sec. 1602 (aa)).

33 (3) Hold itself out to borrowers, through advertising, as a
34 mortgage broker, rather than a residential mortgage lender.
35 However, a licensee shall disclose its status as a broker or agent
36 when that disclosure is required by law.

37 (4) Perform activity subject to Section 10131 of the Business
38 and Professions Code, except activities authorized by this division.

39 (e) A mortgage loan originator may only provide brokerage
40 services as an employee of a licensed residential mortgage lender.

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

3 SEC. 83. Section 50701 of the Financial Code is amended to
4 read:

5 50701. (a) As soon as practical after a borrower requests that
6 the residential mortgage lender licensee arrange a loan to be made
7 by another institutional lender, and before the licensee performs
8 brokerage services for the borrower, the licensee and borrower
9 shall enter into a written loan brokerage agreement that satisfies
10 the requirements of this section.

11 (b) Both the licensee's authorized representative, who shall be
12 a licensed mortgage loan originator, and the borrower shall sign
13 and date the loan brokerage agreement, and the licensee shall
14 deliver a copy of the fully executed loan brokerage agreement to
15 the borrower either upon execution, if the documents are signed
16 in the licensee's office, or within three business days after
17 execution.

18 (c) The loan brokerage agreement shall contain an explicit
19 statement that (1) the licensee is acting as the agent of the borrower
20 in providing brokerage services to the borrower, and (2) when
21 acting as agent for the borrower, it owes to that borrower a
22 fiduciary duty of utmost care, honesty, and loyalty in the
23 transaction, including the duty of full disclosure of all material
24 facts. If the licensee is authorized to act as an agent for any other
25 person, the brokerage agreement shall contain a statement of that
26 fact and identification of that person.

27 (d) The loan brokerage agreement shall contain a detailed
28 description of the services the licensee agrees to perform for the
29 borrower, and a good faith estimate of any fees the licensee will
30 receive for those services, whether paid by the borrower, the
31 institutional lender, or both.

32 (e) The loan brokerage agreement shall carry a clear and
33 conspicuous statement of the conditions under which the borrower
34 is obligated to pay the licensee for brokerage services rendered
35 under the agreement.

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

1 (1) Rescind the brokerage agreement.

2 (2) Recover fees paid by the borrower to the licensee for
3 brokerage services rendered by the licensee pursuant to the
4 agreement.

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

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

10 (h) The loan brokerage agreement shall be the only agreement
11 between the borrower and the licensee with respect to a single
12 loan.

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

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

24 (2) An application fee.

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

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

32 (1) The agreement specifies the services to be rendered for the
33 application fee.

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

36 (3) The agreement does not contain a provision that purports to
37 except or relieve the licensee from the responsibility to fulfill
38 verbal commitments and representations made by employees or
39 agents of the licensee when contracting for the application fee, or
40 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. 84. The Legislature finds and declares that Sections 4,
6 20, and 62 of this act imposes a limitation on the public's right of
7 access to the meetings of public bodies or the writings of public
8 officials and agencies within the meaning of Section 3 of Article
9 I of the California Constitution. Pursuant to that constitutional
10 provision, the Legislature makes the following findings to
11 demonstrate the interest protected by this limitation and the need
12 for protecting that interest:

13 In order to allow the Department of Real Estate and the
14 Department of Corporations to fully accomplish their goals, it is
15 imperative to protect the interests of those persons submitting
16 information to the departments to ensure that any personal or
17 sensitive business information that this act requires those persons
18 to submit is protected as confidential information.

19 SEC. 85. The provisions of Sections 1 to 6, inclusive, of this
20 act shall become operative when the Real Estate Commissioner
21 issues a finding that the Nationwide Mortgage Licensing System
22 and Registry is capable of two-way electronic communication with
23 the enterprise information system maintained by the Department
24 of Real Estate. *The provisions of Sections 7 to 83, inclusive, of this*
25 *act shall become operative on January 1, 2010. However, no*
26 *person shall be required to have a mortgage loan originator license*
27 *under the California Finance Lenders Law or the California*
28 *Residential Mortgage Lending Act, nor a mortgage loan originator*
29 *license endorsement under the Real Estate Law, before August 1,*
30 *2010.*

31 SEC. 86. The provisions of this act are severable. If any
32 provision of this act or its application is held invalid, that invalidity
33 shall not affect other provisions or applications that can be given
34 effect without the invalid provision or application.

35 SEC. 87. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

O