

AMENDED IN SENATE APRIL 20, 2009
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 3 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.

(3) This bill would delay the operation of its provisions with respect to real estate ~~licensee's~~ licensees 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.

(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.
- 3 SEC. 2. Section 10140.6 of the Business and Professions Code
- 4 is amended to read:

1 10140.6. (a) A real estate licensee shall not publish, circulate,
2 distribute, or cause to be published, circulated, or distributed in
3 any newspaper or periodical, or by mail, any matter pertaining to
4 any activity for which a real estate license is required that does
5 not contain a designation disclosing that he or she is performing
6 acts for which a real estate license is required.

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

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

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

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

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

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

37 10150. (a) Application for the real estate broker license
38 examination shall be made in writing to the commissioner. The
39 commissioner may prescribe the format and content of the broker
40 examination application. The application for the broker

1 examination shall be accompanied by the real estate broker license
2 examination fee.

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

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

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

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

30
31 Article 2.1. Secure and Fair Enforcement for Mortgage Licenses

32
33 10166.01. For purposes of this article, the following definitions
34 shall apply:

35 (a) "SAFE Act" means the federal Secure and Fair Enforcement
36 for Mortgage Licensing Act of 2008 (Public Law 110-289).

37 (b) (1) "Mortgage loan originator" means an individual who
38 takes a residential mortgage loan application or offers or negotiates
39 terms of a residential mortgage loan for compensation or gain. An
40 individual real estate licensee acting within the meaning of

1 paragraph (d) of Section 10131 is a mortgage loan originator for
2 purposes of this article with respect to activities involving
3 residential mortgage loans.

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

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

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

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

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

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

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

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

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

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

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

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

17 (2) Obtaining and maintaining a real estate license endorsement
18 *pursuant to this article* identifying that individual as a licensed
19 mortgage loan originator.

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

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

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

33 (f) A real estate broker who fails to notify the department
34 pursuant to subdivision (a), or who fails to obtain a license
35 endorsement required pursuant to *paragraph (2) of* subdivision
36 (b), shall be assessed a penalty of fifty dollars (\$50) per day for
37 each day written notification has not been received or a license
38 endorsement has not been obtained, up to and including the 30th
39 day after the first day of the assessment penalty. On and after the
40 31st day, the penalty is one hundred dollars (\$100) per day, not to

1 exceed a total penalty of ten thousand dollars (\$10,000), regardless
2 of the number of days, until the department receives the written
3 notification or the licensee obtains the license endorsement.

4 Penalties for violations of subdivisions (a) and (b) shall be additive.

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

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

14 10166.03. (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 obtain a license endorsement 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 who is employed by a mortgage
29 loan originator may not engage in the activities of a loan processor
30 or underwriter for a residential mortgage loan unless the
31 independent contractor loan processor or underwriter obtains and
32 maintains an endorsement as a mortgage loan originator under this
33 article. Each independent contractor loan processor or underwriter
34 who obtains and maintains an endorsement as a mortgage loan
35 originator under this article shall have and maintain a valid unique
36 identifier issued by the Nationwide Mortgage Licensing System
37 and Registry.

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

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

3 (1) Fingerprint images and related information, for purposes of
4 performing a federal, or both a state and federal, criminal history
5 background check.

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

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

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

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

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

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

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

3 10166.05. Notwithstanding any other provision of law, the
4 commissioner shall not issue a license endorsement to act as a
5 mortgage loan originator to an applicant unless the commissioner
6 makes all of the following findings:

7 (a) The applicant has never had a mortgage loan originator
8 license revoked in any governmental jurisdiction, except that a
9 subsequent formal vacation of a revocation shall not be deemed a
10 revocation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (1) Name and license number of the supervising broker and
22 names and license numbers of the real estate brokers and
23 salespersons under that broker's supervision. The report shall
24 include brokers and salespersons who were under the supervising
25 broker's supervision for all or part of the year.

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

30 (A) Activities relating to mortgages, including arranging,
31 making, or servicing.

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

34 (C) Activities performed under related licenses, including, but
35 not limited to, a license to engage as a finance lender or a finance
36 broker under the California Finance Lenders Law (Division 9
37 (commencing with Section 22000) of the Financial Code), or a
38 license to engage as a residential mortgage lender or residential
39 mortgage loan servicer under the California Residential Mortgage

1 Lending Act (Division 20 (commencing with Section 50000) of
2 the Financial Code).

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

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

8 (A) The total number, aggregate principal amount, lowest
9 interest rate, highest interest rate, and a list of the institutional
10 lenders of record. If the loan was funded by any lender other than
11 an institutional lender, the broker shall categorize the loan as
12 privately funded.

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

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

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

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

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

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

30 (6) For all loans made, brokered, or serviced, the total number
31 and aggregate principal amount of loans funded by institutional
32 lenders, and the total number and aggregate principal amount of
33 loans funded by private lenders.

34 (7) For all loans made, brokered, or serviced, the total number
35 and aggregate principal amount of loans that included a prepayment
36 penalty, the minimum prepayment penalty length, the maximum
37 prepayment penalty length, and the number of loans with
38 prepayment penalties whose length exceeded the length of time
39 before the borrower's loan payment amount could increase.

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

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

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

12 (11) For purposes of this section, an institutional lender has the
13 meaning specified in paragraph (1) of subdivision (c) of Section
14 10232.

15 (b) A broker subject to this section and Section 10232.2 may
16 file consolidated reports that include all of the information required
17 under this section and Section 10232.2. Those consolidated reports
18 shall clearly indicate that they are intended to satisfy the
19 requirements of both sections.

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

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

38 10166.08. Each mortgage loan originator shall submit reports
39 of condition to the Nationwide Mortgage Licensing System and
40 Registry reports of condition, and those reports shall be in the form

1 and shall contain information as the Nationwide Mortgage
2 Licensing System and Registry may require.

3 10166.09. The minimum standards for renewal of an
4 endorsement as a mortgage loan originator shall include the
5 following:

6 (a) The mortgage loan originator continues to meet the minimum
7 standards for obtaining an endorsement as a mortgage loan
8 originator.

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

11 10166.10. (a) A mortgage loan originator shall complete at
12 least eight hours of continuing education annually, which shall
13 include at least three hours relating to federal law and regulations,
14 two hours of ethics, which shall include instruction on fraud,
15 consumer protection, and fair lending issues, and two hours related
16 to lending standards for the nontraditional mortgage product
17 marketplace.

18 (b) For purposes of subdivision (a), continuing education courses
19 and course providers shall be reviewed and approved by the
20 commissioner and the Nationwide Mortgage Licensing System
21 and Registry.

22 (c) The commissioner shall have the authority to substitute any
23 of the courses described in subdivision (a) for the course
24 requirements of Section 10170.5, subject to a finding that the
25 course requirements in subdivision (a) are substantially equivalent
26 to, and meet the intent of, Section 10170.5.

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

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

36 (f) A mortgage loan originator may only receive credit for a
37 continuing education course in the year in which the course is
38 taken.

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

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

8 (i) A person who successfully completes the education
9 requirements approved by the Nationwide Mortgage Licensing
10 System and Registry in any state other than California shall be
11 granted credit by the commissioner towards completion of
12 continuing education requirements in this state.

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

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

31 (b) Notwithstanding subdivision (a) of Section 10148, the
32 business documents and records of real estate brokers described
33 in subdivision (a) and real estate salespersons acting under those
34 brokers are subject to inspection and examination or audit by the
35 commissioner, at his or her discretion, after reasonable notice.
36 That real estate broker or salesperson shall, upon request by the
37 commissioner and within the time period specified in that request,
38 allow the commissioner, or his or her authorized representative,
39 to inspect and copy any business documents and records. The
40 commissioner may suspend or revoke the license of the broker or

1 salesperson if he or she fails to produce documents or records
2 within the time period specified in the request.

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

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

32 (b) The commissioner may impose a penalty against a real estate
33 broker or real estate salesperson whose affairs are examined or
34 reviewed pursuant to subdivision (a) based on the findings of the
35 examination or review. The commissioner may suspend or revoke
36 the license or license endorsement of a real estate broker or real
37 estate salesperson who fails to pay that penalty. In addition, the
38 commissioner may bring an action in an appropriate court of this
39 state to collect payment of the penalty.

1 (c) Penalties collected pursuant to subdivision (b) shall be
2 deposited into the Recovery Account of the Real Estate Fund and
3 shall, upon appropriation by the Legislature, be available for
4 expenditure for the purposes specified in Chapter 6.5 (commencing
5 with Section 10470).

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

14 10166.13. A real estate broker who acts pursuant to Section
15 10131.1 or subdivision (d) or (e) of Section 10131 and who makes,
16 arranges, or services loans secured by real property containing one
17 to four residential units shall make any special reports to the
18 commissioner that the commissioner may, from time to time,
19 require.

20 10166.14. A real estate broker shall notify the department when
21 he or she is no longer subject to this part. If a broker has already
22 made reports required by Sections 10166.07 and 10166.08 within
23 the year, he or she shall continue reports for that year, but shall
24 notify the department prior to the expiration of that year that he
25 or she will no longer be subject to this part in the succeeding year.

26 10166.15. (a) The commissioner shall regularly report
27 violations of this article, as well as enforcement actions taken
28 against any mortgage loan originator to whom an endorsement has
29 been issued, and enforcement actions taken against any individual
30 for failure to obtain an endorsement as a mortgage loan originator,
31 to the Nationwide Mortgage Licensing System and Registry.

32 (b) The commissioner shall establish a process that may be used
33 by mortgage loan originators to challenge information entered into
34 the Nationwide Mortgage Licensing System and Registry by the
35 commissioner.

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

1 10166.16. (a) Except as otherwise provided in Section 1512
2 of the SAFE Act, the requirements under any federal or state law
3 regarding the privacy or confidentiality of any information or
4 material provided to the Nationwide Mortgage Licensing System
5 and Registry, and any privilege arising under federal or state law,
6 including the rules of any federal or state court, with respect to
7 that information or material, shall continue to apply to the
8 information or material after the information or material has been
9 disclosed to the Nationwide Mortgage Licensing System and
10 Registry. The information and material may be shared with all
11 state and federal regulatory officials with mortgage industry
12 oversight authority without the loss of privilege or the loss of
13 confidentiality protections provided by federal or state law.

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

20 (c) Information or material that is subject to a privilege or
21 confidentiality under subdivision (a) shall not be subject to either
22 of the following:

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

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

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

37 10166.17. In addition to any other duties imposed upon the
38 commissioner by law, the commissioner shall require mortgage
39 loan originators to be licensed and registered through the
40 Nationwide Mortgage Licensing System and Registry. In order to

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

6 (a) Background checks for the following:

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

8 (2) Civil or administrative records.

9 (3) Credit history.

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

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

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

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

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

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

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

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

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

1 Licensing System and Registry on all advertisements where there
2 is a solicitation for borrowers.

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

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

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

11 22012. (a) “Branch office license” means a license to engage
12 in business as a finance lender or broker at a location other than
13 the location identified in a finance lender or broker license
14 application or amended application.

15 (b) “Depository institution” has the same meaning as in Section
16 3 of the Federal Deposit Insurance Act, and includes any credit
17 union.

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

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

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

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

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

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

5 22013. (a) “Mortgage loan originator” means an individual
6 who, for compensation or gain, or in the expectation of
7 compensation or gain, takes a residential mortgage loan application
8 or offers or negotiates terms of a residential mortgage loan.

9 (b) Mortgage loan originator does not include any of the
10 following:

11 (1) An individual who performs purely administrative or clerical
12 tasks on behalf of a person meeting the definition of a mortgage
13 loan originator, except as provided in subdivision (c) of Section
14 22014. The term “administrative or clerical tasks” means the
15 receipt, collection, and distribution of information common for
16 the processing or underwriting of a loan in the mortgage industry
17 and communication with a consumer to obtain information
18 necessary for the processing or underwriting of a residential
19 mortgage loan, to the extent that the communication does not
20 include offering or negotiating loan rates or terms, or counseling
21 consumers about residential mortgage loan rates or terms.

22 (2) An individual that is not compensated by a lender, other
23 mortgage loan originator, or by any agent of any lender or other
24 mortgage loan originator.

25 (3) An individual that is solely involved in extensions of credit
26 relating to timeshare plans, as that term is defined in Section
27 101(53D) of Title 11 of the United States Code.

28 (4) An individual licensed as a mortgage loan originator pursuant
29 to the provisions of Article 2.1 (commencing with Section
30 10166.01) of Chapter 2 of Division 4 of the Business and
31 Professions Code and the SAFE Act.

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

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

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

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

1 (d) “Loan processor or underwriter” means an individual who
2 performs clerical or support duties as an employee at the direction
3 of, and subject to the supervision and instruction of, a mortgage
4 loan originator licensed by the state or a registered mortgage loan
5 originator.

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

7 22014. (a) A loan processor or underwriter who does not
8 represent to the public, through advertising or other means of
9 communicating or providing information, including the use of
10 business cards, stationery, brochures, signs, rate lists, or other
11 promotional items, that the individual can or will perform any of
12 the activities of a mortgage loan originator shall not be required
13 to be licensed as a mortgage loan originator.

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

21 (c) An independent contractor may not engage in the activities
22 of a loan processor or underwriter for a residential mortgage loan
23 unless the independent contractor loan processor or underwriter
24 obtains and maintains a mortgage loan originator license under
25 this division. Each independent contractor loan processor or
26 underwriter licensed as a mortgage loan originator shall have and
27 maintain a valid unique identifier issued by the Nationwide
28 Mortgage Licensing System and Registry.

29 SEC. 10. Section 22057 of the Financial Code is amended to
30 read:

31 22057. This division does not apply to any loan that is made
32 or arranged by any person licensed as a real estate broker or as a
33 real estate salesperson by the state and secured by a lien on real
34 property, or to any licensed real estate broker or licensed real estate
35 salesperson when making such a loan. A licensed real estate broker
36 or licensed real estate salesperson may make a loan secured by a
37 lien on real property for sale to a finance lender or arrange for a
38 loan secured by a lien on real property to be made by a finance
39 lender without obtaining a license under this division.

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

3 22060. This division does not apply to a loan made or arranged
4 by a licensed residential mortgage lender or servicer, or an
5 employee thereof, when acting under the authority of that license.

6 SEC. 12. Section 22100 of the Financial Code is amended to
7 read:

8 22100. (a) No person shall engage in the business of a finance
9 lender or broker without obtaining a license from the commissioner.

10 (b) A finance lender or broker shall not employ a mortgage loan
11 originator unless the mortgage loan originator has first obtained a
12 license from the commissioner under this division or Division 20
13 (commencing with Section 50000), or has first obtained a license
14 endorsement from the Commissioner of Real Estate pursuant to
15 Article 2.1 (commencing with Section 10166.01) of Chapter 2 of
16 Division 4 of the Business and Professions Code.

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

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

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

25 SEC. 13. Section 22101 of the Financial Code is amended to
26 read:

27 22101. (a) An application for a license as a finance lender or
28 broker under this division shall be in the form and contain the
29 information that the commissioner may by rule require and shall
30 be filed upon payment of the fee specified in Section 22103.

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

39 (c) Nothing in this section shall be construed to prevent a
40 licensee from engaging in the business of a finance lender through

1 a subsidiary corporation if the subsidiary corporation is licensed
2 pursuant to this division.

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

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

8 SEC. 14. Section 22101.5 of the Financial Code is amended
9 to read:

10 22101.5. (a) The commissioner shall submit to the Department
11 of Justice fingerprint images and related information required by
12 the Department of Justice of all finance lender and broker license
13 candidates, as defined by subdivision (a) of Section 22101, for
14 purposes of obtaining information as to the existence and content
15 of a record of state or federal convictions, state or federal arrests,
16 and information as to the existence and content of a record of state
17 or federal arrests for which the Department of Justice establishes
18 that the person is free on bail or on his or her own recognizance
19 pending trial or appeal.

20 (b) When received, the Department of Justice shall forward to
21 the Federal Bureau of Investigation requests for federal summary
22 criminal history information received pursuant to this section. The
23 Department of Justice shall review the information returned from
24 the Federal Bureau of Investigation and compile and disseminate
25 a response to the commissioner.

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

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

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

35 SEC. 15. Section 22102 of the Financial Code is amended to
36 read:

37 22102. (a) A finance lender or broker licensee seeking to
38 engage in business at a new location shall submit an application
39 for a branch office license to the commissioner at least 10 days
40 before engaging in business at a new location and pay the fee

1 required by Section 22103. The commissioner may require an
2 applicant seeking to engage in business at a new location to submit
3 its application, or parts thereof, through the Nationwide Mortgage
4 Licensing System and Registry.

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

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

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

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

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

21 (f) A branch office license to engage in business at a new
22 location shall be issued in accordance with this section. A change
23 of street address of a place of business designated in a license shall
24 be made in accordance with Section 22153 and shall not constitute
25 a new location subject to the requirements of this section.

26 SEC. 16. Section 22103 of the Financial Code is amended to
27 read:

28 22103. At the time of filing the application for a finance lender,
29 broker, or branch office license, the applicant shall pay to the
30 commissioner the sum of one hundred dollars (\$100) as a fee for
31 investigating the application, plus the cost of fingerprint processing
32 and the criminal history record check under Section 22101.5, and
33 two hundred dollars (\$200) as an application fee. The investigation
34 fee, including the amount for the criminal history record check,
35 and the application fee are not refundable if an application is denied
36 or withdrawn.

37 SEC. 17. Section 22104 of the Financial Code is amended to
38 read:

39 22104. (a) The applicant shall file with the application for a
40 finance lender or broker license financial statements prepared in

1 accordance with generally accepted accounting principles and
2 acceptable to the commissioner that indicate a net worth of at least
3 twenty-five thousand dollars (\$25,000). Except as provided in
4 subdivision (b), a licensee shall maintain a net worth of at least
5 twenty-five thousand dollars (\$25,000) at all times.

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

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

13 SEC. 18. Section 22105.1 is added to the Financial Code, to
14 read:

15 22105.1. (a) An applicant for a mortgage loan originator
16 license shall apply in a form as prescribed by the commissioner.
17 Each form shall contain content as set forth by rule, regulation,
18 instruction, or procedure of the commissioner and may be changed
19 or updated as necessary by the commissioner in order to carry out
20 the purposes of this division.

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

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

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

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

29 SEC. 19. Section 22105.2 is added to the Financial Code, to
30 read:

31 22105.2. (a) The commissioner is authorized to establish
32 relationships or contracts with the Nationwide Mortgage Licensing
33 System and Registry or other entities designated by the Nationwide
34 Mortgage Licensing System and Registry to collect and maintain
35 records and process transaction fees or other fees related to
36 licensees or other persons subject to this division.

37 (b) For the purpose of participating in the Nationwide Mortgage
38 Licensing System and Registry, the commissioner is authorized
39 to waive or modify, in whole or in part, by rule, regulation, or
40 order, any or all of the requirements of this division and to establish

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

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

7 (d) The commissioner may use the Nationwide Mortgage
8 Licensing System and Registry as a channeling agent for requesting
9 and distributing information to and from any source so directed
10 by the commissioner.

11 (e) The commissioner shall establish a process where applicants
12 and licensees may challenge information entered into the
13 Nationwide Mortgage Licensing System and Registry by the
14 commissioner.

15 SEC. 20. Section 22105.3 is added to the Financial Code, to
16 read:

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

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

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

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

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

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

15 SEC. 21. Section 22105.4 is added to the Financial Code, to
16 read:

17 22105.4. The commissioner shall regularly report violations
18 of this division, as well as enforcement actions and other relevant
19 information, to the Nationwide Mortgage Licensing System and
20 Registry, to the extent that information is public record.

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

23 22106. (a) The finance lender or broker license shall state the
24 name of the licensee, and if the licensee is a partnership, the names
25 of its general partners, and if a corporation or an association, the
26 date and place of its incorporation or organization, and the address
27 of the licensee’s principal business location. On the approval and
28 licensing of a location pursuant to Section 22101 or 22102, the
29 commissioner shall issue an original license endorsed to show the
30 address of the authorized location and, if applicable, the name of
31 the subsidiary corporation licensed to operate the location. The
32 license shall state whether the licensee is licensed as a finance
33 lender or a broker.

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

37 (1) Make the licensee’s books, accounts, papers, records, and
38 files available to the commissioner or the commissioner’s
39 representatives in this state.

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

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

8 SEC. 23. Section 22107 of the Financial Code is amended to
9 read:

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

23 (b) On or before the 30th day of November in each year, the
24 commissioner shall notify each licensee of the amount assessed
25 and levied against it and that amount shall be paid by December
26 31. If payment is not made by December 31, the commissioner
27 shall assess and collect a penalty, in addition to the assessment, of
28 1 percent of the assessment for each month or part of a month that
29 the payment is delayed or withheld.

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

33 (d) If a licensee fails to pay the assessment on or before the 31st
34 day of January following the day upon which payment is due, the
35 commissioner may by order summarily suspend or revoke the
36 certificate issued to the licensee. If, after an order is made, a request
37 for hearing is filed in writing within 30 days, and a hearing is not
38 held within 60 days thereafter, the order is deemed rescinded as
39 of its effective date. During any period when its certificate is
40 revoked or suspended, a finance lender or broker licensee and any

1 mortgage loan originator licensee employed by the finance lender
2 or broker shall not conduct business pursuant to this division except
3 as may be permitted by order of the commissioner. However, the
4 revocation, suspension, or surrender of a certificate shall not affect
5 the powers of the commissioner as provided in this division.

6 SEC. 24. Section 22109 of the Financial Code is amended to
7 read:

8 22109. (a) Upon reasonable notice and opportunity to be heard,
9 the commissioner may deny the application for a finance lender
10 or broker license for any of the following reasons:

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

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

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

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

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

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

1 22109.1. The commissioner shall not issue a mortgage loan
2 originator license unless the commissioner makes, at a minimum,
3 the following findings:

4 (a) The applicant has never had a mortgage loan originator
5 license revoked in any governmental jurisdiction, except that a
6 subsequent formal vacation of a revocation shall not be deemed a
7 revocation.

8 (b) The applicant has not been convicted of, or pled guilty or
9 nolo contendere to, a felony in a domestic, foreign, or military
10 court, as follows:

11 (1) During the seven-year period preceding the date of the
12 application for licensing and registration.

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

16 (3) Provided that any pardon of a conviction shall not be a
17 conviction for purposes of this subdivision.

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

23 (d) The applicant has completed the prelicensing education
24 requirement described in Section 22109.2.

25 (e) The applicant has passed a written test that meets the test
26 requirement described in Section 22109.3.

27 (f) The applicant is employed by, and subject to the supervision
28 of, a finance lender or broker that has obtained a license from the
29 commissioner pursuant to this division.

30 SEC. 26. Section 22109.2 is added to the Financial Code, to
31 read:

32 22109.2. (a) An applicant for a mortgage loan originator
33 license shall complete at least 20 hours of education approved in
34 accordance with subdivision (b). The education shall include at
35 least the following:

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

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

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

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

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

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

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

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

23 SEC. 27. Section 22109.3 is added to the Financial Code, to
24 read:

25 22109.3. (a) An applicant for a mortgage loan originator
26 license shall pass a qualified written test developed by the
27 Nationwide Mortgage Licensing System and Registry and
28 administered by a test provider approved by the Nationwide
29 Mortgage Licensing System and Registry.

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

- 34 (1) Ethics.
- 35 (2) Federal law and regulation relating to mortgage origination.
- 36 (3) State law and regulation relating to mortgage origination.
- 37 (4) Federal and state law and regulation, including instruction
38 on fraud, consumer protection, the nontraditional mortgage
39 marketplace, and fair lending issues.

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

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

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

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

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

21 SEC. 28. Section 22109.4 is added to the Financial Code, to
22 read:

23 22109.4. (a) A mortgage loan originator shall comply with
24 the requirements of this section on or before December 31 of every
25 year.

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

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

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

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

35 (c) The license of a mortgage loan originator failing to satisfy
36 the minimum standards for license renewal shall expire at midnight
37 on January 31, except as provided in subdivision (h) of Section
38 22109.5. The commissioner may adopt procedures for the
39 reinstatement of expired licenses consistent with the standards

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

3 SEC. 29. Section 22109.5 is added to the Financial Code, to
4 read:

5 22109.5. (a) A licensed mortgage loan originator shall
6 complete at least eight hours of continuing education approved in
7 accordance with subdivision (b). The continuing education shall
8 include at least the following:

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

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

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

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

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

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

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

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

32 (2) May not take the same approved course in the same or
33 successive years to meet the annual requirements for continuing
34 education.

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

1 (g) A person who has successfully completed continuing
2 education requirements approved by the Nationwide Mortgage
3 Licensing System and Registry for any state other than California
4 shall be granted credit toward completion of continuing education
5 requirements in California.

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

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

14 SEC. 30. Section 22109.6 is added to the Financial Code, to
15 read:

16 22109.6. In addition to any other duties imposed upon the
17 commissioner by law, the commissioner shall require mortgage
18 loan originators to be licensed and registered through the
19 Nationwide Mortgage Licensing System and Registry. In order to
20 carry out this requirement, the commissioner is authorized to
21 participate in the Nationwide Mortgage Licensing System and
22 Registry. For this purpose, the commissioner may establish by
23 rule, regulation, or order, requirements as necessary, including,
24 but not limited to, the following:

25 (a) Background information for the following:

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

27 (2) Civil or administrative records.

28 (3) Credit history.

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

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

33 (c) The setting or resetting as necessary of renewal or reporting
34 dates.

35 (d) Requirements for amending or surrendering a license or any
36 other activities as the commissioner deems necessary for
37 participation in the Nationwide Mortgage Licensing System and
38 Registry.

39 SEC. 31. Section 22151 of the Financial Code is amended to
40 read:

1 22151. (a) A finance lender license, broker license, and the
2 license of every mortgage loan originator employed by a lender
3 or finance broker, along with any currently effective order of the
4 commissioner approving a different name pursuant to Section
5 22155, shall be conspicuously posted in the place of business
6 authorized by the license.

7 (b) A license is not transferable or assignable. A license issued
8 to a partnership or a limited partnership is not transferred or
9 assigned within the meaning of this section by the death,
10 withdrawal, or admission of a partner, general partner, or limited
11 partner, unless the death, withdrawal, or admission dissolves the
12 partnership to which the license was issued.

13 SEC. 32. Section 22152 of the Financial Code is amended to
14 read:

15 22152. A finance lender or broker licensee shall maintain only
16 one place of business under a duplicate or original license issued
17 pursuant to Section 22101 or 22102. The commissioner may issue
18 more than one license to the same licensee upon compliance with
19 all the provisions of this division governing an original issuance
20 of a license.

21 SEC. 33. Section 22153 of the Financial Code is amended to
22 read:

23 22153. (a) If a finance lender or broker licensee seeks to
24 change its place of business to a street address other than that
25 designated in its license, the licensee shall provide notice to the
26 commissioner at least 10 days prior to the change. The
27 commissioner shall notify the licensee within 10 days if the
28 commissioner disapproves the change, and if the commissioner
29 does not notify the licensee of disapproval within 10 days, the
30 change in address shall be deemed approved. The commissioner
31 may require an applicant to submit its application to change its
32 place of business through the Nationwide Mortgage Licensing
33 System and Registry.

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

1 SEC. 34. Section 22154 of the Financial Code is amended to
2 read:

3 22154. (a) No licensee shall conduct the business of making
4 loans under this division within any office, room, or place of
5 business in which any other business is solicited or engaged in, or
6 in association or conjunction therewith, except as is authorized in
7 writing by the commissioner upon the commissioner’s finding that
8 the character of the other business is such that the granting of the
9 authority would not facilitate evasions of this division or of the
10 rules and regulations made pursuant to this division. An
11 authorization once granted remains in effect until revoked by the
12 commissioner. The commissioner may authorize the other business
13 through the Nationwide Mortgage Licensing System and Registry.

14 (b) The products or services of an affiliated corporation of the
15 licensee that is a supervised financial institution, or a parent or
16 subsidiary of a supervised financial institution that is an affiliate
17 of the licensee, may be provided, offered, or sold at the licensed
18 location of the licensee without authorization by the commissioner
19 pursuant to subdivision (a) if (1) the activity is not prohibited by,
20 or in violation of, the laws applicable to the affiliate or supervised
21 financial institution, and (2) the products and services are not
22 offered and sold in a manner that restricts the ability of the
23 borrower or customer to individually select or reject a product or
24 service that is offered.

25 (c) The following definitions govern the construction of this
26 section:

27 (1) “Affiliated” or “affiliate” means the following: A corporation
28 is an affiliate of, or a corporation is affiliated with, another
29 specified corporation if it directly, or indirectly through one or
30 more intermediaries, controls, is controlled by, or is under common
31 control with, the other specified corporation.

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

38 SEC. 35. Section 22155 of the Financial Code is amended to
39 read:

1 22155. No finance lender, broker, or mortgage loan originator
2 licensee shall transact the business licensed or make any loan
3 provided for by this division under any other name or at any other
4 place of business than that named in the license except pursuant
5 to a currently effective written order of the commissioner
6 authorizing the other name or other place of business. The
7 commissioner's order, while effective, shall be deemed to amend
8 the original license issued pursuant to Section 22105 or 22109.1.
9 Notwithstanding any provision of this section, a licensee may make
10 any loan and engage in any other business provided for by this
11 division, other than the business described in subdivision (b) of
12 Section 22154, at a place other than the licensed location under
13 either of the following conditions:

14 (a) The borrower requests, either orally or in writing, that a loan
15 be initiated or made at a location other than the licensee's licensed
16 location. The use by the licensee of a preprinted solicitation form
17 returned to the licensee by the borrower shall not constitute a
18 request by the borrower that a loan be initiated or made at a
19 location other than the licensee's licensed location.

20 (b) The licensee makes a solicitation or advertises for, or makes
21 an offer of, a loan displayed on "home pages" or similar methods
22 by the licensee on the Internet, the World Wide Web, or similar
23 proprietary or common carrier electronic systems, and the
24 prospective borrower may transmit information over these
25 electronic systems to the licensee in connection with the licensee's
26 offer to make a loan.

27 SEC. 36. Section 22156 of the Financial Code is amended to
28 read:

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

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

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

7 SEC. 38. Section 22159 of the Financial Code is amended to
8 read:

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

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

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

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

27 22169. (a) The commissioner may, after appropriate notice
28 and opportunity for hearing, by order, censure or suspend for a
29 period not exceeding 12 months, or bar from any position of
30 employment, management, or control any finance lender, broker,
31 mortgage loan originator, or any other person, if the commissioner
32 finds either of the following:

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

39 (2) That the person has been convicted of or pleaded nolo
40 contendere to any crime, or has been held liable in any civil action

1 by final judgment, or any administrative judgment by any public
2 agency, if that crime or civil or administrative judgment involved
3 any offense involving dishonesty, fraud, or deceit, or any other
4 offense reasonably related to the qualifications, functions, or duties
5 of a person engaged in the business in accordance with the
6 provisions of this division.

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

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

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

27 SEC. 41. Section 22171 of the Financial Code is amended to
28 read:

29 22171. (a) The commissioner shall apply the guidance on
30 nontraditional mortgage product risks published on November 14,
31 2006, by the Conference of State Bank Supervisors and the
32 American Association of Residential Mortgage Regulators, and
33 the Statement on Subprime Mortgage Lending published on July
34 17, 2007, by the aforementioned entities and the National
35 Association of Consumer Credit Administrators, to licensees.

36 (b) The commissioner may adopt emergency and final
37 regulations to clarify the application of this section as soon as
38 possible.

39 (c) A finance lender or broker licensee shall adopt and adhere
40 to policies and procedures that are reasonably intended to achieve

1 the objectives set forth in the documents described in subdivision
2 (a). A mortgage loan originator licensee shall adhere to policies
3 and procedures developed by its employer in accordance with this
4 division and applicable federal law and regulation.

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

6 22347. The unique identifier of any licensed mortgage loan
7 originator shall be clearly shown on all residential mortgage loan
8 application forms, solicitations, or advertisements, including
9 business cards or Internet Web sites, and any other documents as
10 established by rule, regulation, or order of the commissioner.

11 SEC. 43. Section 22700 of the Financial Code is amended to
12 read:

13 22700. (a) Finance lender and broker licenses issued under
14 this division shall be renewed annually upon the payment of an
15 annual assessment, and if renewed by the licensee, shall remain
16 in effect until they are surrendered, revoked, or suspended.

17 (b) Surrender of a license becomes effective 30 days after receipt
18 of an application to surrender the license or within a shorter period
19 of time that the commissioner may determine, unless a revocation
20 or suspension proceeding is pending when the application is filed
21 or a proceeding to revoke or suspend or to impose conditions upon
22 the surrender is instituted within 30 days after the application is
23 filed. If a proceeding is pending or instituted, surrender of a license
24 becomes effective at the time and upon the conditions that the
25 commissioner determines.

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

27 22755. It is a violation of this division for a mortgage loan
28 originator to do any of the following:

29 (a) Directly or indirectly employ any scheme, device, or artifice
30 to defraud or mislead borrowers or lenders or to defraud any
31 person.

32 (b) Engage in any unfair or deceptive practice toward any
33 person.

34 (c) Obtain property by fraud or misrepresentation.

35 (d) Solicit or enter into a contract with a borrower that provides
36 in substance that the mortgage loan originator may earn a fee or
37 commission through best efforts to obtain a loan even though no
38 loan is actually obtained for the borrower.

- 1 (e) Solicit, advertise, or enter into a contract for specific interest
2 rates, points, or other financing terms unless the terms are actually
3 available at the time of soliciting, advertising, or contracting.
- 4 (f) Conduct any business covered by this division without
5 holding a valid license as required under this division, or assist or
6 aide and abet any person in the conduct of business under this
7 division without a valid license as required under this division.
- 8 (g) Fail to make disclosures as required by this division and any
9 other applicable state or federal law, including regulations
10 thereunder.
- 11 (h) Fail to comply with this division or rules or regulations
12 promulgated under this division, or fail to comply with any other
13 state or federal law, including the rules and regulations thereunder,
14 applicable to any business authorized or conducted under this
15 division.
- 16 (i) Make, in any manner, any false or deceptive statement or
17 representation including, with regard to the rates, points, or other
18 financing terms or conditions for a residential mortgage loan, or
19 engage in bait and switch advertising.
- 20 (j) Negligently make any false statement or knowingly and
21 willfully make any omission of material fact in connection with
22 any information or reports filed with a governmental agency or
23 the Nationwide Mortgage Licensing System and Registry or in
24 connection with any investigation conducted by the commissioner
25 or another governmental agency.
- 26 (k) Make any payment, threat, or promise, directly or indirectly,
27 to any person for the purposes of influencing the independent
28 judgment of the person in connection with a residential mortgage
29 loan, or make any payment, threat, or promise, directly or
30 indirectly, to any appraiser of a property, for the purposes of
31 influencing the independent judgment of the appraiser with respect
32 to the value of the property.
- 33 (l) Collect, charge, attempt to collect or charge, or use or propose
34 any agreement purporting to collect or charge any fee prohibited
35 by this division.
- 36 (m) Cause or require a borrower to obtain property insurance
37 coverage in an amount that exceeds the replacement cost of the
38 improvements as established by the property insurer.
- 39 (n) Fail to truthfully account for moneys belonging to a party
40 of a residential mortgage loan transaction.

1 SEC. 45. Section 50002 of the Financial Code is amended to
2 read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (13) A registered mortgage loan originator described in
15 subdivision (d).

16 (c) An individual, unless specifically exempted under
17 subdivision (d), shall not engage in the business of a mortgage
18 loan originator with respect to any dwelling located in this state
19 without first obtaining and maintaining annually a license in
20 accordance with the requirements of Chapter 3.5 (commencing
21 with Section 50140) and any rules promulgated by the
22 commissioner under that chapter. Each licensed mortgage loan
23 originator shall register with and maintain a valid unique identifier
24 issued by the Nationwide Mortgage Licensing System and Registry.

25 (d) A registered mortgage loan originator is exempt from
26 licensure under subdivisions (a) and (c), when he or she is
27 employed by a depository institution, a subsidiary of a depository
28 institution that is owned and controlled by a depository institution
29 and regulated by a federal banking agency, or an institution
30 regulated by the Farm Credit Administration.

31 (e) A loan processor or underwriter who is an independent
32 contractor employed by a residential mortgage lender or servicer
33 may not engage in the activities of a loan processor or underwriter
34 under this division unless the independent contractor loan processor
35 or underwriter obtains and maintains a license under Section 50120.

36 SEC. 46. Section 50002.5 is added to the Financial Code, to
37 read:

38 50002.5. (a) A residential mortgage lender or servicer shall
39 not employ a mortgage loan originator unless the mortgage loan
40 originator has first obtained a license from the commissioner under

1 this division or Division 9 (commencing with Section 22000), or
2 has first obtained a license endorsement from the commissioner
3 of Real Estate pursuant to Article 2.1 (commencing with Section
4 10166.01) of Chapter 2 of Division 4 of the Business and
5 Professions Code.

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

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

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

14 (e) No mortgage loan originator licensed under this division
15 shall engage in any activity that is not an authorized activity for a
16 licensed residential mortgage lender or residential mortgage
17 servicer pursuant to this division.

18 SEC. 47. Section 50003 of the Financial Code is amended to
19 read:

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

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

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

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

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

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

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

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

18 (i) “In this state” means any activity of a person relating to
19 making or servicing a residential mortgage loan that originates
20 from this state and is directed to persons outside this state, or that
21 originates from outside this state and is directed to persons inside
22 this state, or that originates inside this state and is directed to
23 persons inside this state, or that leads to the formation of a contract
24 and the offer or acceptance thereof is directed to a person in this
25 state (whether from inside or outside this state and whether the
26 offer was made inside or outside the state).

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

28 (1) The United States or any state, district, territory, or
29 commonwealth thereof, or any city, county, city and county, public
30 district, public authority, public corporation, public entity, or
31 political subdivision of a state, district, territory, or commonwealth
32 of the United States, or any agency or other instrumentality of any
33 one or more of the foregoing, including, by way of example, the
34 Federal National Mortgage Association and the Federal Home
35 Loan Mortgage Corporation.

36 (2) Any bank, trust company, savings bank or savings and loan
37 association, credit union, industrial bank or industrial loan
38 company, personal property broker, consumer finance lender,
39 commercial finance lender, or insurance company, or subsidiary
40 or affiliate of one of the preceding entities, doing business under

1 the authority of or in accordance with a license, certificate, or
2 charter issued by the United States or any state, district, territory,
3 or commonwealth of the United States.

4 (3) Trustees of pension, profit-sharing, or welfare funds, if the
5 pension, profit-sharing, or welfare fund has a net worth of not less
6 than fifteen million dollars (\$15,000,000), except pension,
7 profit-sharing, or welfare funds of a licensee or its affiliate,
8 self-employed individual retirement plans, or individual retirement
9 accounts.

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

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

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

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

24 (6) A residential mortgage lender or servicer licensed to make
25 residential mortgage loans under this law or an affiliate or
26 subsidiary of that person.

27 (7) Any person who is licensed as a securities broker or
28 securities dealer under any law of this state, or of the United States,
29 or any employee, officer or agent of that person, if that person is
30 acting within the scope of authority granted by that license or an
31 affiliate or subsidiary controlled by that broker or dealer, in
32 connection with a transaction involving the offer, sale, purchase,
33 or exchange of one or more promissory notes secured directly or
34 indirectly by liens on real property or a security representing an
35 ownership interest in a pool of promissory notes secured directly
36 or indirectly by liens on real property, and the offer and sale of
37 those securities is qualified under the California Corporate
38 Securities Law of 1968 or registered under federal securities laws,
39 or exempt from qualification or registration.

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

4 (9) A business development company as defined in Section
5 2(a)(48) of the Investment Company Act of 1940 or a Small
6 Business Investment Company licensed by the United States Small
7 Business Administration under Section 301(c) or (d) of the Small
8 Business Investment Act of 1958.

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

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

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

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

19 (i) Interest-bearing obligations.

20 (ii) Other contractual obligations representing the right to receive
21 payments from the assets.

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

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

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

32 (ii) Sold to an institutional investor.

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

36 (k) “Institutional lender” means the following:

37 (1) The United States or any state, district, territory, or
38 commonwealth thereof, or any city, county, city and county, public
39 district, public authority, public corporation, public entity, or
40 political subdivision of a state, district, territory, or commonwealth

1 of the United States, or any agency or other instrumentality of any
2 one or more of the foregoing, including, by way of example, the
3 Federal National Mortgage Association and the Federal Home
4 Loan Mortgage Corporation.

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

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

15 (4) A residential mortgage lender or servicer licensed to make
16 residential mortgage loans under this law.

17 (l) “Law” means the California Residential Mortgage Lending
18 Act.

19 (m) “Lender” means a person that (1) is an approved lender for
20 the Federal Housing Administration, Veterans Administration,
21 Farmers Home Administration, Government National Mortgage
22 Association, Federal National Mortgage Association, or Federal
23 Home Loan Mortgage Corporation, (2) directly makes residential
24 mortgage loans, and (3) makes the credit decision in the loan
25 transactions.

26 (n) “Licensee” means, depending on the context, a person
27 licensed under Chapter 2 (commencing with Section 50120),
28 Chapter 3 (commencing with Section 50130), or Chapter 3.5
29 (commencing with Section 50140).

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

35 (p) “Mortgage loan,” “residential mortgage loan,” or “home
36 mortgage loan” means a federally regulated mortgage loan as
37 defined in Section 3500.2 of Title 24 of the Code of Federal
38 Regulations, or a loan made to finance construction of a one-to-four
39 family dwelling.

1 (q) “Mortgage servicer” or “residential mortgage loan servicer”
2 means a person that (1) is an approved servicer for the Federal
3 Housing Administration, Veterans Administration, Farmers Home
4 Administration, Government National Mortgage Association,
5 Federal National Mortgage Association, or Federal Home Loan
6 Mortgage Corporation, and (2) directly services or offers to service
7 mortgage loans.

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

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

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

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

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

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

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

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

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

5 SEC. 48. Section 50003.5 is added to the Financial Code, to
6 read:

7 50003.5. (a) “Mortgage loan originator” means an individual
8 who, for compensation or gain, or in the expectation of
9 compensation or gain, takes a residential mortgage loan application
10 or offers or negotiates terms of a residential mortgage loan.

11 (b) Mortgage loan originator does not include any of the
12 following:

13 (1) An individual who performs purely administrative or clerical
14 tasks on behalf of a person meeting the definition of a mortgage
15 loan originator, except as provided in subdivision (c) of Section
16 50003.6. The term “administrative or clerical tasks” means the
17 receipt, collection, and distribution of information common for
18 the processing or underwriting of a loan in the mortgage industry
19 and communication with a consumer to obtain information
20 necessary for the processing or underwriting of a residential
21 mortgage loan, to the extent that the communication does not
22 include offering or negotiating loan rates or terms, or counseling
23 consumers about residential mortgage loan rates or terms.

24 (2) An individual that is not compensated by a lender, other
25 mortgage loan originator, or by any agent of any lender or other
26 mortgage loan originator.

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

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

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

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

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

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

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

8 SEC. 49. Section 50003.6 is added to the Financial Code, to
9 read:

10 50003.6. (a) A loan processor or underwriter who does not
11 represent to the public, through advertising or other means of
12 communicating or providing information, including the use of
13 business cards, stationery, brochures, signs, rate lists, or other
14 promotional items, that the individual can or will perform any of
15 the activities of a loan originator shall not be required to be licensed
16 as a mortgage loan originator.

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

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

32 SEC. 50. Section 50120 of the Financial Code is amended to
33 read:

34 50120. (a) A residential mortgage lender shall file an
35 application for licensure under this chapter with the commissioner
36 to make or service residential mortgage loans in this state.

37 (b) A licensee may not engage in the business as a residential
38 mortgage lender under a name other than the name that appears
39 on the license, or a legally assumed name disclosed either in the

1 application or in an amendment to the application, which shall be
2 reflected on the license.

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

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

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

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

26 SEC. 51. Section 50121 of the Financial Code is amended to
27 read:

28 50121. The commissioner shall issue a residential mortgage
29 lender license upon the satisfaction of all of the following:

30 (a) The filing with the commissioner of a complete and executed
31 application for licensure, which may, at the discretion of the
32 commissioner, include background and experience disclosures
33 required by any of the uniform application forms of the Nationwide
34 Mortgage Licensing System and Registry.

35 (b) The payment of a nonrefundable investigation fee of one
36 hundred dollars (\$100), plus the cost of fingerprint processing and
37 clearance, and an application filing fee of nine hundred dollars
38 (\$900).

39 (c) An investigation of the statements required by Section 50124
40 based upon which the commissioner is able to issue findings that

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

9 SEC. 52. Section 50122 of the Financial Code is amended to
10 read:

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

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

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

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

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

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

6 (B) Any person that controls, directly or indirectly, the election
7 of 25 percent or more of the members of the board of directors of
8 an applicant.

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

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

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

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

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

19 SEC. 53. Section 50123 of the Financial Code is amended to
20 read:

21 50123. (a) A residential mortgage lender license shall be
22 renewed annually upon the payment of the annual fee or
23 assessment, and if renewed, shall remain in effect until suspended,
24 surrendered, or revoked.

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

1 (c) A residential mortgage lender or servicer licensee may not
2 surrender its license under this division and, under the authority
3 of a real estate license, subsequently engage in residential mortgage
4 lending or servicing activities that are subject to this division,
5 unless the licensee has been licensed under this division for a
6 period of five years or more.

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

11 SEC. 54. Section 50124 of the Financial Code is amended to
12 read:

13 50124. (a) A residential mortgage lender shall do all of the
14 following:

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

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

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

23 (4) Disburse funds in accordance with its agreements and to
24 make a good faith and reasonable effort to effect closing in a timely
25 manner.

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

33 (6) File with the commissioner an amendment to its application
34 prior to any material change in the information contained in the
35 application for licensure, including, without limitation, the plan
36 of operation. The commissioner shall, within 20 business days of
37 receiving a completed amendment to the application, or within a
38 longer time if agreed to by the licensee, approve or disapprove the
39 effectiveness of the proposed amendment.

- 1 (7) Comply with the provisions of this division, and with any
- 2 order or rule of the commissioner.
- 3 (8) Submit to periodic examination by the commissioner as
- 4 required by this division.
- 5 (9) Advise the commissioner by amendment to its application
- 6 of any material judgment filed against, or bankruptcy petition filed
- 7 by, the licensee within five days of the filing.
- 8 (10) Notify the commissioner, in writing, prior to opening a
- 9 branch office in this state or changing its business location or
- 10 locations or its branch offices from which activities subject to this
- 11 division are conducted.
- 12 (11) Comply with all applicable state and federal tax return
- 13 filing requirements.
- 14 (12) Refrain from committing a crime against the laws of any
- 15 state or the United States, involving moral turpitude,
- 16 misrepresentation, fraudulent or dishonest dealing, or fraud, and
- 17 disclose to the commissioner any final judgment entered against
- 18 it in a civil action upon grounds or allegations of fraud,
- 19 misrepresentation, or deceit.
- 20 (13) Refrain from engaging in conduct that would be cause for
- 21 denial of a license.
- 22 (14) Remain solvent.
- 23 (15) Proceed with due care and competence in performing any
- 24 act for which it is required to hold a license under this division.
- 25 (16) Comply with any other requirement established by rule of
- 26 the commissioner.
- 27 (b) The commissioner may require an applicant to submit a
- 28 statement agreeing to comply with the requirements of this section.
- 29 SEC. 55. Section 50125 of the Financial Code is amended to
- 30 read:
- 31 50125. The commissioner may refuse to issue a residential
- 32 mortgage lender license if any of the following apply:
- 33 (a) The applicant is not in material compliance with a provision
- 34 of this division or an order or rule of the commissioner.
- 35 (b) The commissioner cannot make the findings specified in
- 36 subdivision (d) of Section 50121.
- 37 (c) A material requirement for issuance of a license has not been
- 38 met.
- 39 SEC. 56. Section 50126 of the Financial Code is amended to
- 40 read:

1 50126. (a) Upon reasonable notice and opportunity to be heard,
2 the commissioner may deny an application for any of the following
3 reasons:

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

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

14 (3) The applicant or any officer, director, general partner, or
15 person owning or controlling, directly or indirectly, 10 percent or
16 more of the outstanding interests or equity securities of the
17 applicant, has violated any provision of this division or the rules
18 thereunder or any similar regulatory scheme of the State of
19 California or a foreign jurisdiction.

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

24 (c) The commissioner shall, within 60 days from the filing of
25 a full and complete application for a license, including the receipt
26 of background and investigative reports from the Department of
27 Justice or other government agencies, and the payment of the fees
28 required by Section 50121, issue either a residential mortgage
29 lender license or a statement of issues prepared in accordance with
30 Chapter 5 (commencing with Section 11500) of Part 1 of Division
31 3 of Title 2 of the Government Code.

32 SEC. 57. Section 50127 of the Financial Code is amended to
33 read:

34 50127. The proceedings for a denial of a residential mortgage
35 lender license shall be conducted in accordance with Chapter 5
36 (commencing with Section 11500) of Part 1 of Division 3 of Title
37 2 of the Government Code, and the commissioner has all the
38 powers granted therein.

39 SEC. 58. Section 50128 of the Financial Code is amended to
40 read:

1 50128. As used in this act, the term “principal officer” means
2 an officer with direct responsibility for the conduct of the
3 residential mortgage lender licensee’s or license applicant’s lending
4 or servicing activities in this state.

5 SEC. 59. Section 50129 of the Financial Code is amended to
6 read:

7 50129. (a) A residential mortgage lender licensed under this
8 chapter may, under the authority of that license and subject to the
9 provisions of this division, do both of the following:

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

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

31 (b) The act of soliciting other institutional lenders with whom
32 a residential mortgage lender licensee has concluded an agency
33 contract pursuant to paragraph (2) of subdivision (a) for placement
34 of a loan upon declination of that loan by another institutional
35 lender contracted under paragraph (2) of subdivision (a), constitutes
36 brokerage services, and may be pursued by the licensee only
37 following execution of a loan brokerage agreement with the
38 borrower as provided in this division.

39 SEC. 60. Section 50130 of the Financial Code is amended to
40 read:

1 50130. (a) A mortgage servicer shall file an application for
2 licensure under this chapter with the commissioner to service
3 mortgage loans in this state by satisfying the requirements of this
4 chapter and the applicable provisions, as determined by the
5 commissioner, of Chapter 2 (commencing with Section 50120).

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

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

11 (2) Paying the investigation and application fees required by
12 Section 50121.

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

14 (4) Complying with the applicable provisions of Chapter 2
15 (commencing with Section 50120).

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

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

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

37 (f) The commissioner shall license a mortgage servicer upon
38 completion of the investigation and issuance of the findings
39 required by Section 50121, subject to Sections 50123, 50125,
40 50126, and 50127.

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

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

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

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

14

15 CHAPTER 3.5. MORTGAGE LOAN ORIGINATORS

16

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

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

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

32 (1) Fingerprint images and related information, for purposes of
33 performing a federal, or both a state and federal, criminal history
34 background check.

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

1 (A) An independent credit report obtained from a consumer
2 reporting agency.

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

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

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

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). The
27 Department of Justice shall provide the same electronic response
28 to the commissioner.

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

31 50141. The commissioner shall not issue a mortgage loan
32 originator license unless the commissioner makes at a minimum
33 the following findings:

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

38 (b) The applicant has not been convicted of, or pled guilty or
39 nolo contendere to, a felony in a domestic, foreign, or military
40 court during the seven-year period preceding the date of the

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

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

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

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

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

18 50142. (a) An applicant for a mortgage loan originator license
19 shall complete at least 20 hours of education approved in
20 accordance with subdivision (b). The education shall include at
21 least the following:

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

23 (2) Three hours of ethics, which shall include instruction on
24 fraud, 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 subdivision (a), prelicensing education
28 courses shall be reviewed and approved by the Nationwide
29 Mortgage Licensing System and Registry. Review and approval
30 of a prelicensing education course shall include review and
31 approval of the course provider.

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

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

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

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

9 50143. (a) An applicant for a mortgage loan originator license
10 shall pass a qualified written test developed by the Nationwide
11 Mortgage Licensing System and Registry and administered by a
12 test provider approved by the Nationwide Mortgage Licensing
13 System and Registry.

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

18 (1) Ethics.

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

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

21 (4) Federal and state law and regulation, including instruction
22 on fraud, consumer protection, the nontraditional mortgage
23 marketplace, and fair lending issues.

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

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

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

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

39 (4) A licensed mortgage loan originator who fails to maintain
40 a valid license for a period of five years or longer shall retake the

1 test, not taking into account any time during which the individual
2 is a registered mortgage loan originator.

3 50144. (a) A mortgage loan originator shall comply with the
4 requirements of this section on or before December 31 of every
5 year.

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

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

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

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

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

21 50145. (a) A licensed mortgage loan originator shall complete
22 at least eight hours of continuing education approved in accordance
23 with subdivision (b). The continuing education shall include at
24 least the following:

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

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

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

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

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

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

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

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

8 (2) May not take the same approved course in the same or
9 successive years to meet the annual requirements for continuing
10 education.

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

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

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

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

29 50146. 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 (a) Background checks for:

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

40 (2) Civil or administrative records.

- 1 (3) Credit history.
- 2 (4) Any other information as deemed necessary by the
- 3 Nationwide Mortgage Licensing System and Registry.
- 4 (b) The payment of fees to apply for or renew licenses through
- 5 the Nationwide Mortgage Licensing System and Registry.
- 6 (c) The setting or resetting as necessary of renewal or reporting
- 7 dates.
- 8 (d) Requirements for amending or surrendering a license or any
- 9 other activities as the commissioner deems necessary for
- 10 participation in the Nationwide Mortgage Licensing System and
- 11 Registry.

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

14
 15 CHAPTER 3.6. NATIONWIDE MORTGAGE LICENSING SYSTEM
 16 AND REGISTRY

17
 18 50150. (a) The commissioner is authorized to establish
 19 relationships or contracts with the Nationwide Mortgage Licensing
 20 System and Registry or other entities designated by the Nationwide
 21 Mortgage Licensing System and Registry to collect and maintain
 22 records and process transaction fees or other fees related to
 23 licensees or other persons subject to this division.

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

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

34 (d) The commissioner may use the Nationwide Mortgage
 35 Licensing System and Registry as a channeling agent for requesting
 36 and distributing information to and from any source so directed
 37 by the commissioner.

38 (e) The commissioner shall establish a process where applicants
 39 and licensees may challenge information entered into the

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

3 50151. (a) Except as otherwise provided in Section 1512 of
4 the SAFE Act, the requirements under any federal law or the
5 Information Practices Act (Chapter 1 (commencing with Section
6 1798) of Part 4 of Division 3 of the Civil Code) regarding the
7 privacy or confidentiality of any information or material provided
8 to the Nationwide Mortgage Licensing System and Registry, and
9 any privilege arising under federal or state law, including the rules
10 of any federal or state court, with respect to that information or
11 material, shall continue to apply to the information or material
12 after the information or material has been disclosed to the
13 Nationwide Mortgage Licensing System and Registry. The
14 information and material may be shared with all state and federal
15 regulatory officials with mortgage industry oversight authority
16 without the loss of privilege or the loss of confidentiality
17 protections provided by federal law or the Information Practices
18 Act.

19 (b) Information or material that is subject to a privilege or
20 confidentiality under subdivision (a) shall not be subject to the
21 following:

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

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

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

36 50152. The commissioner shall report regularly violations of
37 this division, as well as enforcement actions and other relevant
38 information, to the Nationwide Mortgage Licensing System and
39 Registry, to the extent that information is public record.

1 SEC. 63. Section 50200 of the Financial Code is amended to
2 read:

3 50200. (a) At the end of the licensee's fiscal year, but in no
4 case more than 12 months after the last audit conducted pursuant
5 to this section, each licensed residential mortgage lender or servicer
6 shall cause its books and accounts to be audited by an independent
7 certified public accountant. Beginning with all audits of business
8 conducted after December 31, 1995, the audit shall be sufficiently
9 comprehensive in scope to permit the expression of an opinion on
10 the financial statements prepared in accordance with generally
11 accepted accounting principles and shall be performed in
12 accordance with generally accepted auditing standards. The audit
13 shall include a reconciliation of the licensee's trust accounts as of
14 the audit date.

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

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

31 (d) The audit report shall be filed with the commissioner within
32 105 days of the end of the licensee's fiscal year. The report filed
33 with the commissioner shall be certified by the certified public
34 accountant conducting the audit. The commissioner may
35 promulgate rules regarding late audit reports.

36 (e) If a licensee required to make an audit fails to cause an audit
37 to be made, the commissioner may cause the audit to be made by
38 an independent certified public accountant at the licensee's
39 expense. The commissioner shall select the independent certified
40 public accountant by advertising for bids or by other fair and

1 impartial means that the commissioner establishes by rule. The
2 commissioner may summarily revoke the license of a licensee who
3 fails to file a certified financial statement prepared by an
4 independent certified public accountant as required by this division
5 or at the request of the commissioner.

6 (f) Audits conducted in accordance with the uniform single audit
7 procedures of the United States Department of Housing and Urban
8 Development may be submitted in fulfillment of the requirements
9 of this section.

10 SEC. 64. Section 50201 of the Financial Code is amended to
11 read:

12 50201. (a) A licensee issued a license for purposes of making
13 or servicing residential mortgage loans, including a licensee
14 employing one or more mortgage loan originators, shall
15 continuously maintain a minimum tangible net worth at all times
16 of two hundred fifty thousand dollars (\$250,000).

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

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

23 SEC. 65. Section 50202 of the Financial Code is amended to
24 read:

25 50202. (a) Escrow funds for a purpose authorized by the
26 residential mortgage loan contract (1) shall be subject to and satisfy
27 all applicable state and federal requirements, including Section
28 2609 of the federal Real Estate Settlement Procedures Act of 1974,
29 as amended (12 U.S.C. Sec. 2601 et seq.) and all applicable
30 provisions of the Civil Code, (2) shall be maintained in a depository
31 institution as described in subdivision (b), and (3) may not be
32 commingled with a licensee's funds.

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

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

40 (2) Refunds to the borrower.

1 (3) Transfer to another institution that is described in this
2 subdivision.

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

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

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

8 (c) As used in this section, “trust funds” means funds collected
9 by a licensee in connection with the making or servicing of a
10 residential mortgage loan that the licensee holds on behalf of
11 another.

12 (d) Notwithstanding any other provision of law, but subject to
13 the limitations of Section 854, benefits accruing from the placement
14 in a non-interest-bearing account of a commercial bank (including
15 a national banking association) of funds received by a licensee
16 who services mortgage loans under this law, shall inure to the
17 licensee, unless otherwise agreed in writing by the licensee and
18 the investor on whose behalf the licensee services the loan. A
19 borrower shall receive at least 2 percent simple interest per annum
20 on impound account payments covered by Section 2954.8 of the
21 Civil Code.

22 (e) Trust funds are not subject to the enforcement of a money
23 judgment arising out of a claim against the licensee or person
24 acting as the servicing agent, and in no instance shall the trust
25 funds be considered or treated as an asset of the licensee or person
26 performing the functions of a residential mortgage lender or loan
27 servicer.

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

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

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

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

38 (4) The licensee discloses to the person from whom the funds
39 are received and the beneficiary of the account how interest will
40 be calculated and paid, whether service charges will be paid to the

1 depository and by whom, and possible notice requirements or
2 penalties for withdrawal of funds from the account.

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

5 SEC. 66. Section 50205 of the Financial Code is amended to
6 read:

7 50205. (a) A residential mortgage lender or servicer licensee
8 shall maintain a surety bond in accordance with this subdivision.
9 The bond shall be used for the recovery of expenses, fines, and
10 fees levied by the commissioner in accordance with this division
11 or for losses or damages incurred by borrowers or consumers as
12 the result of a licensee's noncompliance with the requirements of
13 this division. The bond shall be payable when the licensee fails to
14 comply with a provision of this division and shall be in the amount
15 of fifty thousand dollars (\$50,000), and may be increased by order
16 of the commissioner to one hundred thousand dollars (\$100,000)
17 upon a determination by the commissioner that the licensee is not
18 in compliance with any provision of this chapter or any rule or
19 order adopted or issued by the commissioner to implement or
20 enforce provisions of this chapter. The bond shall be payable to
21 the commissioner and issued by an insurance company authorized
22 to do business in this state. An original surety bond, including any
23 and all riders and endorsements executed subsequent to the
24 effective date of the bond, shall be filed with the commissioner
25 within 10 days of its execution.

26 (b) When an action is commenced on a licensee's bond, the
27 commissioner may require the filing of a new bond. Immediately
28 upon the recovery of an action on the bond, the licensee shall file
29 a new bond. Failure to file a new bond within 10 days of the
30 recovery on a bond, or within 10 days after notification by the
31 commissioner that a new bond is required, constitutes sufficient
32 grounds for the suspension or revocation of the license.

33 SEC. 67. Section 50206 of the Financial Code is amended to
34 read:

35 50206. (a) Prior to a change of control of the business of a
36 licensee, the person wishing to acquire control shall submit an
37 application to the commissioner and pay an investigation fee of
38 one hundred dollars (\$100). The application shall contain the
39 information that the commissioner, by rule, may prescribe as

1 necessary to determine that the person meets the requirements of
2 Section 50121.

3 (b) The commissioner shall approve or disapprove the proposed
4 change of control of a licensee in accordance with the provisions
5 of Section 50126.

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

9 SEC. 68. Section 50208 of the Financial Code is amended to
10 read:

11 50208. The license shall state the name of the licensee. If the
12 licensee is a partnership, the license shall state the names of its
13 general partners. If the licensee is a corporation or an association,
14 the license shall state the date and place of the corporation's
15 incorporation or organization. If the licensee is a residential
16 mortgage lender or servicer, the license shall state the address of
17 the licensee's principal business location. The license shall state
18 whether the licensee is licensed as a residential mortgage loan
19 lender or servicer or as a mortgage loan originator.

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

21 50209. The unique identifier of any licensed mortgage loan
22 originator shall be clearly shown on all residential mortgage loan
23 application forms, solicitations, or advertisements, including
24 business cards or Internet Web sites, and any other documents as
25 established by rule, regulation, or order of the commissioner.

26 SEC. 70. Section 50302 of the Financial Code is amended to
27 read:

28 50302. (a) As often as the commissioner deems necessary and
29 appropriate, but at least once every 48 months, the commissioner
30 shall examine the affairs of each residential mortgage lender and
31 servicer licensee for compliance with this division. The
32 commissioner shall appoint suitable persons to perform the
33 examination. The commissioner and his or her appointees may
34 examine the books, records, and documents of the licensee, and
35 may examine the licensee's officers, directors, employees, or agents
36 under oath regarding the licensee's operations. The commissioner
37 may cooperate with any agency of the state or federal government,
38 other states, agencies, the Federal National Mortgage Association,
39 or the Federal Home Loan Mortgage Corporation. The
40 commissioner may accept an examination conducted by one of

1 these entities in place of an examination by the commissioner
2 under this law, unless the commissioner determines that the
3 examination does not provide information necessary to enable the
4 commissioner to fulfill his or her responsibilities under this
5 division.

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

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

16 (d) The residential mortgage lender or servicer licensee shall
17 pay, and the commissioner shall assess, the reasonable expenses
18 of any examination of the licensee and affiliates, consistent with
19 the requirements of subdivision (c) of Section 50314.

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

28 SEC. 71. Section 50307 of the Financial Code is amended to
29 read:

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

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

39 (c) If any licensed residential mortgage lender or servicer subject
40 to this division fails to make a report required by law or by the

1 commissioner, the commissioner may immediately cause the books,
2 records, papers, and affairs of that licensee to be thoroughly
3 examined.

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

6 50307.2. The commissioner may require a licensee that employs
7 one or more mortgage loan originators to submit to the Nationwide
8 Mortgage Licensing System and Registry reports of condition,
9 which shall be in such form and shall contain such information as
10 the Nationwide Mortgage Licensing System and Registry may
11 require.

12 SEC. 73. Section 50317 of the Financial Code is amended to
13 read:

14 50317. (a) Any person who has been convicted of, or pleaded
15 nolo contendere to any crime specified in subdivision (b) within
16 the past 10 years or has been held liable in any civil action by final
17 judgment or any administrative judgment by any public agency
18 within the past seven years, of any of the provisions specified in
19 subdivision (b), shall not serve as an officer, director, partner,
20 shareholder controlling 10 percent or more of the ownership
21 interests, trustee, or employee of a residential mortgage lender or
22 residential mortgage loan servicer. This subdivision shall not apply
23 to any person whose office, employment, ownership interest, or
24 other participation in the business of a licensed residential mortgage
25 lender or residential mortgage loan servicer commenced prior to
26 January 1, 1995, or whose criminal conviction, plea, or judgment
27 occurred prior to January 1, 1995.

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

31 (1) Offenses specified in Chapter 18 (commencing with Section
32 3350) of Division 1.

33 (2) Offenses specified in Article 4 (commencing with Section
34 5300) of Chapter 1 of Division 2.

35 (3) Offenses specified in Article 8 (commencing with Section
36 14750) of Chapter 4 of Division 5.

37 (4) Offenses specified in Chapter 7 (commencing with Section
38 17700) of Division 6.

39 (5) Offenses specified in Chapter 6 (commencing with Section
40 18435) of Division 7.

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

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

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

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

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

38 (f) Nothing in this section shall be construed to permit the
39 reinstatement of any person barred by the commissioner pursuant

1 to Section 50320 nor to prohibit the commissioner from bringing
2 any action pursuant to Section 50320.

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

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

14 SEC. 74. Section 50318 of the Financial Code is amended to
15 read:

16 50318. (a) The commissioner may, after appropriate notice
17 and opportunity for hearing, by order censure or suspend for a
18 period not exceeding 12 months, or bar from any position of
19 employment, management, or control any residential mortgage
20 lender, residential mortgage loan servicer, or mortgage loan
21 originator, or any other person, if the commissioner finds either
22 of the following:

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

30 (2) That the person (A) has been convicted of or pleaded nolo
31 contendere to any crime, or (B) has been held liable in any civil
32 action by final judgment, or any administrative judgment by any
33 public agency, if that crime or civil or administrative judgment
34 involved any offense specified in subdivision (b) of Section 50317,
35 or any other offense reasonably related to the qualifications,
36 functions, or duties of a person engaged in the business in
37 accordance with the provisions of this division.

38 (b) Within 15 days from the date of a notice of intention to issue
39 an order pursuant to subdivision (a), the person may request a
40 hearing under the Administrative Procedure Act (Chapter 5

1 (commencing with Section 11500) of Part 1 of Division 3 of Title
2 2 of the Government Code). Upon receiving a request, the matter
3 shall be set for hearing to commence within 30 days after receipt
4 unless the person subject to this division consents to a later date.
5 If no hearing is requested within 15 days after the mailing or
6 service of the notice and none is ordered by the commissioner, the
7 failure to request a hearing shall constitute a waiver of the right to
8 a hearing.

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

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

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

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

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

36 SEC. 75. Section 50320 of the Financial Code is amended to
37 read:

38 50320. Whenever, in the opinion of the commissioner, a person
39 is engaged, either actually or through subterfuge, in the business
40 of making residential mortgage loans, servicing residential

1 mortgage loans, or engaging in business as a mortgage loan
2 originator, without a license from the commissioner, the
3 commissioner may order that person to desist and refrain. If, within
4 30 days after an order is served, a request for a hearing is filed in
5 writing and the hearing is not held within 60 days of the filing, the
6 order is rescinded. This section does not apply to persons exempted
7 under subdivision (b) of Section 50002.

8 SEC. 76. Section 50325 of the Financial Code is amended to
9 read:

10 50325. The commissioner may immediately revoke the
11 residential mortgage lender's, residential mortgage loan servicer's,
12 or mortgage loan originator's license if the licensee fails to comply
13 with any order issued under Section 50318, 50319, 50321, 50322,
14 or 50503. The commissioner shall not revoke the license if, within
15 10 days from the effective date of the revocation order, the licensee
16 secures a court order restraining the enforcement of the
17 commissioner's revocation order.

18 SEC. 77. Section 50328 of the Financial Code is amended to
19 read:

20 50328. Except in the case of an exempt person, whenever the
21 commissioner deems it to be necessary for the public interest, the
22 commissioner has continuous authority to exercise the powers set
23 forth in this division. These powers may be exercised whether or
24 not an application for a license has been filed with the
25 commissioner, any license has been issued, or if issued, has been
26 surrendered, suspended, or revoked, or has expired.

27 SEC. 78. Section 50333 of the Financial Code is amended to
28 read:

29 50333. (a) The commissioner shall apply the guidance on
30 nontraditional mortgage product risks published on November 14,
31 2006, by the Conference of State Bank Supervisors and the
32 American Association of Residential Mortgage Regulators, and
33 the Statement on Subprime Mortgage Lending published on July
34 17, 2007, by the aforementioned entities and the National
35 Association of Consumer Credit Administrators, to licensees.

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

38 (c) A licensee shall adopt and adhere to policies and procedures
39 that are reasonably intended to achieve the objectives set forth in
40 the documents described in subdivision (a). A licensed mortgage

1 loan originator shall adhere to policies and procedures developed
2 by his or her employer in accordance with this division and
3 applicable federal law and regulation.

4 SEC. 79. Section 50401 of the Financial Code is amended to
5 read:

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

39 In order for the commissioner to calculate the assessment under
40 this section, each residential mortgage lender and servicer licensee

1 shall file an annual report for the calendar year just ended
2 containing the information required by the commissioner on or
3 before March 1 of the year in which the assessment is to be
4 calculated.

5 In determining the amount assessed, the commissioner shall
6 consider all appropriations from the State Corporations Fund for
7 the support of this division and all reimbursements provided for
8 under this division.

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

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

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

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

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

1 SEC. 82. Section 50700 of the Financial Code is amended to
2 read:

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

8 (b) “Brokerage services” means either of the following:

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

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

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

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

30 (1) Provide brokerage services through independent contractors.

31 (2) Obtain or attempt to obtain for a borrower a residential
32 mortgage loan that is a “high cost mortgage,” referred to in Section
33 152(aa)(1) of the federal Home Ownership and Equity Protection
34 Act of 1994, as amended (15 U.S.C. Sec. 1602(aa)).

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

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

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

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 SEC. 84. The Legislature finds and declares that Sections 4,
4 20, and 62 of this act imposes a limitation on the public's right of
5 access to the meetings of public bodies or the writings of public
6 officials and agencies within the meaning of Section 3 of Article
7 I of the California Constitution. Pursuant to that constitutional
8 provision, the Legislature makes the following findings to
9 demonstrate the interest protected by this limitation and the need
10 for protecting that interest:

11 In order to allow the Department of Real Estate and the
12 Department of Corporations to fully accomplish their goals, it is
13 imperative to protect the interests of those persons submitting
14 information to the departments to ensure that any personal or
15 sensitive business information that this act requires those persons
16 to submit is protected as confidential information.

17 SEC. 85. The provisions of Sections 1 to 6, inclusive, of this
18 act shall become operative when the Real Estate Commissioner
19 issues a finding that the Nationwide Mortgage Licensing System
20 and Registry is capable of two-way electronic communication with
21 the enterprise information system maintained by the Department
22 of Real Estate. The provisions of Sections 7 to 83, inclusive, of
23 this act shall become operative on January 1, 2010. However, no
24 person shall be required to have a mortgage loan originator license
25 under the California Finance Lenders Law or the California
26 Residential Mortgage Lending Act, nor a mortgage loan originator
27 license endorsement under the Real Estate Law, before August 1,
28 2010.

29 SEC. 86. The provisions of this act are severable. If any
30 provision of this act or its application is held invalid, that invalidity
31 shall not affect other provisions or applications that can be given
32 effect without the invalid provision or application.

33 SEC. 87. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

O