

AMENDED IN ASSEMBLY JUNE 23, 2009

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 *10100*, 10140.6, 10150, *10151*, 10235.5, and 10236.4 of, to add Article 2.1 (commencing with Section 10166.01) to Chapter 3 of Division 4 of, and to repeal Section 10131.8 of, the Business and Professions Code, to amend Sections ~~22057, 22060~~, 22100, 22101, 22101.5, 22102, 22103, 22104, 22106, 22107, *22108*, 22109, *22112*, 22151, 22152, 22153, 22154, 22155, 22156, 22157, 22159, 22168, 22169, *22170*, 22171, 22700, 50002, 50003, 50120, 50121, 50122, 50123, 50124, 50125, 50126, 50127, 50128, 50129, 50130, 50200, 50201, 50202, *50204*, 50205, 50206, 50208, 50302, 50307, *50310*, 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, *22172*, 22347, 22755, 50002.5, 50003.5, 50003.6, 50209, ~~and 50307.2~~ *50307.2*, and *50513* 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~~, *50602*, and *50705* 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 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 *before July 31, 2010*, nor a mortgage loan originator license endorsement under the Real Estate Law, as set forth in the bill, ~~before August 1~~ *before December 31, 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 10100 of the Business and Professions*
2 *Code is amended to read:*

3 10100. Before denying, suspending or revoking any license or
4 *license endorsement* issuable or issued under the provisions of this
5 part, the department shall proceed as prescribed by Chapter 5
6 (commencing with Section 11500) of Part 1 of Division 3 of Title
7 2 of the Government Code, and the department shall have all the
8 powers granted therein.

9 ~~SECTION 1.~~

10 *SEC. 2.* Section 10131.8 of the Business and Professions Code
11 is repealed.

12 ~~SEC. 2.~~

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

15 10140.6. (a) A real estate licensee shall not publish, circulate,
16 distribute, or cause to be published, circulated, or distributed in
17 any newspaper or periodical, or by mail, any matter pertaining to
18 any activity for which a real estate license is required that does
19 not contain a designation disclosing that he or she is performing
20 acts for which a real estate license is required.

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

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

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

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

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

~~SEC. 3.~~

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

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

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

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

(d) Application for an endorsement to act as a mortgage loan originator, as defined in Section 10166.01, shall be made either electronically or in writing ~~to~~ *as directed* by the commissioner. The commissioner may prescribe the format and content of the mortgage loan originator endorsement application, which shall

1 meet the minimum requirements for licensing of a mortgage loan
2 originator, pursuant to the Secure and Fair Enforcement for
3 Mortgage Licensing Act of 2008 (Public Law 110-289).

4 *SEC. 5. Section 10151 of the Business and Professions Code*
5 *is amended to read:*

6 10151. (a) Application for the real estate salesperson license
7 examination shall be made in writing to the commissioner. The
8 commissioner may prescribe the format and content of the
9 salesperson examination application. The application for the
10 salesperson examination shall be accompanied by the real estate
11 salesperson license examination fee.

12 (b) Persons who have been notified by the commissioner that
13 they passed the real estate salesperson license examination may
14 apply for a real estate salesperson license. A person applying for
15 the salesperson examination may also apply for a real estate
16 salesperson license. However, a license shall not be issued until
17 the applicant passes the real estate salesperson license examination.
18 If there is any change to the information contained in a real estate
19 salesperson license application after the application has been
20 submitted and before the license has been issued, the commissioner
21 may require the applicant to submit a supplement to the application
22 listing the changed information.

23 (c) An application for the real estate salesperson license
24 examination or for both the examination and license that is received
25 by the commissioner on or after October 1, 2007, shall include
26 evidence or certification, satisfactory to the commissioner, of
27 successful completion at an accredited institution of a
28 three-semester unit course, or the quarter equivalent thereof, or
29 successful completion of an equivalent course of study as defined
30 in Section 10153.5, in real estate principles as well as the successful
31 completion at an accredited institution of a course in real estate
32 practice and one additional course set forth in Section 10153.2,
33 other than real estate principles, real estate practice, advanced legal
34 aspects of real estate, advanced real estate finance, or advanced
35 real estate appraisal. The applicant shall provide this evidence or
36 certification to the commissioner prior to taking the real estate
37 salesperson license examination.

38 (d) The commissioner shall waive the requirements of this
39 section for the following applicants:

40 (1) An applicant who is a member of the State Bar of California.

1 (2) An applicant who has qualified to take the examination for
2 an original real estate broker license by satisfying the requirements
3 of Section 10153.2.

4 (e) *Application for endorsement to act as a mortgage loan*
5 *originator, as defined in Section 10166.01, shall be made either*
6 *electronically or in writing as directed by the commissioner. The*
7 *commissioner may prescribe the format and the content of the*
8 *mortgage loan originator endorsement application, which shall*
9 *meet the minimum requirements for licensing of a mortgage loan*
10 *originator, pursuant to the Secure and Fair Enforcement for*
11 *Mortgage Licensing Act of 2008 (Public Law 110.289).*

12 ~~SEC. 4.~~

13 SEC. 6. Article 2.1 (commencing with Section 10166.01) is
14 added to Chapter 3 of Division 4 of the Business and Professions
15 Code, to read:

16
17 Article 2.1. Secure and Fair Enforcement for Mortgage Licenses

18
19 10166.01. For purposes of this article, the following definitions
20 shall apply:

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

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

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

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

1 (B) An individual that ~~is not~~ *only performs real estate brokerage*
2 *services, as defined in subdivision (a) or (b) of Section 10131,*
3 *unless that person is compensated by a lender, other mortgage*
4 *loan originator, or by any agent of any lender or other mortgage*
5 *loan originator.*

6 (C) *An individual who solely renegotiates terms for existing*
7 *mortgage loans held or serviced by his or her employer and who*
8 *does not otherwise act as a mortgage originator, unless the United*
9 *States Department of Housing and Urban Development or a court*
10 *of competent jurisdiction determines that the SAFE Act requires*
11 *such an employee to be licensed as a mortgage originator under*
12 *state laws implementing the SAFE Act.*

13 ~~(E)~~

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

17 ~~(D)~~

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

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

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

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

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

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

3 10166.02. (a) A real estate broker who acts pursuant to Section
4 10131.1 or subdivision (d) or (e) of Section 10131, and who makes,
5 arranges, or services loans secured by real property containing one
6 to four residential units, *and any salesperson who acts in a similar*
7 *capacity under the supervision of that broker*, shall notify the
8 department within 30 days of the effective date of this section or
9 upon commencing that activity, whichever is later. The notification
10 shall be made in writing, *as directed*, on a form that is acceptable
11 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 (b),
36 shall be assessed a penalty of fifty dollars (\$50) per day for each
37 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.

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

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

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

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

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

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

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

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

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

(1) Three hours of federal law and regulations.

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

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

(b) For purposes of this section, education courses are only acceptable if they have been reviewed and approved, or otherwise deemed acceptable, by the Nationwide Mortgage Licensing System 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.

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

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

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

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

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

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

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

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

(C) Activities performed under related licenses, including, but not limited to, a license to engage as a finance lender or a finance broker under the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code), or a license to engage as a residential mortgage lender or residential 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.

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

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

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

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

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

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

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

(e) The commissioner may waive the requirement to submit certain information described in paragraphs (1) to (10), inclusive, of subdivision (a) if the commissioner determines that this

1 *information is duplicative of information required by the*
2 *Nationwide Mortgage Licensing System and Registry, pursuant*
3 *to Section 10166.08.*

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

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

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

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

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

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

28 (c) The commissioner shall have the authority to substitute any
29 of the courses described in subdivision (a) for the course
30 requirements of Section 10170.5, subject to a finding that the
31 course requirements in subdivision (a) *and the course completion*
32 *standards in subdivision (g) of Section 10166.06* are substantially
33 equivalent to, and meet the intent of, Section 10170.5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~SEC. 5.~~

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

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

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

~~SEC. 6.~~

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

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

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

(c) "Mortgage loan originator," "unique identifier," and "Nationwide Mortgage Licensing System and Registry" have the meanings set forth in Section 10166.01.

~~SEC. 7.~~

SEC. 9. Section 22012 is added to the Financial Code, to read:

22012. (a) "Branch office license" means a license to engage in business as a finance lender or broker at a location other than the location identified in a finance lender or broker license application or amended application.

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

(c) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

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

(e) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in Section 103(v) of the federal Truth in Lending Act, or residential real estate upon which is constructed or intended to be constructed a dwelling. "Dwelling" means a

1 residential structure that contains one to four units, whether or not
2 that structure is attached to real property. The term includes an
3 individual condominium unit, cooperative unit, mobilehome, or
4 trailer, if it is used as a residence.

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

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

10 (h) *For purposes of Sections 22109.2, 22109.3, and 22109.5,*
11 *“nontraditional mortgage product” means any mortgage product*
12 *other than a 30-year fixed rate mortgage.*

13 ~~SEC. 8.~~

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

15 22013. (a) “Mortgage loan originator” means an individual
16 who, for compensation or gain, or in the expectation of
17 compensation or gain, takes a residential mortgage loan application
18 or offers or negotiates terms of a residential mortgage loan.

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

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

32 (2) ~~An individual that is not compensated by a lender, other~~
33 ~~mortgage loan originator, or by any agent of any lender or other~~
34 ~~mortgage loan originator, who solely renegotiates terms for existing~~
35 ~~mortgage loans held or serviced by his or her employer and who~~
36 ~~does not otherwise act as a mortgage originator, unless the United~~
37 ~~States Department of Housing and Urban Development or a court~~
38 ~~of competent jurisdiction determines that the SAFE Act requires~~
39 ~~such an employee to be licensed as a mortgage originator under~~
40 ~~state laws implementing the SAFE Act.~~

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

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

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

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

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

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

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

22 ~~SEC. 9.~~

23 *SEC. 11.* Section 22014 is added to the Financial Code, to read:

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

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

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

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

6 ~~SEC. 10. Section 22057 of the Financial Code is amended to~~
7 ~~read:~~

8 ~~22057. This division does not apply to any loan that is made~~
9 ~~or arranged by any person licensed as a real estate broker or as a~~
10 ~~real estate salesperson by the state and secured by a lien on real~~
11 ~~property, or to any licensed real estate broker or licensed real estate~~
12 ~~salesperson when making such a loan. A licensed real estate broker~~
13 ~~or licensed real estate salesperson may make a loan secured by a~~
14 ~~lien on real property for sale to a finance lender or arrange for a~~
15 ~~loan secured by a lien on real property to be made by a finance~~
16 ~~lender without obtaining a license under this division.~~

17 ~~SEC. 11. Section 22060 of the Financial Code is amended to~~
18 ~~read:~~

19 ~~22060. This division does not apply to a loan made or arranged~~
20 ~~by a licensed residential mortgage lender or servicer, or an~~
21 ~~employee thereof, when acting under the authority of that license.~~

22 SEC. 12. Section 22100 of the Financial Code is amended to
23 read:

24 22100. (a) No person shall engage in the business of a finance
25 lender or broker without obtaining a license from the commissioner.

26 (b) ~~A finance lender or broker shall not employ a mortgage loan~~
27 ~~originator unless the mortgage loan originator has first obtained a~~
28 *Every licensee engaging in the business of making or brokering*
29 *residential mortgage loans shall require that every mortgage loan*
30 *originator employed or compensated by that licensee obtains and*
31 *maintains a mortgage loan originator license from the*
32 *commissioner under this division or Division 20 (commencing*
33 *with Section 50000), or has first obtained a license endorsement*
34 *from the Commissioner of Real Estate pursuant to Article 2.1*
35 *(commencing with Section 10166.01) of Chapter 2 of Division 4*
36 *of the Business and Professions Code.*

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

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

4 *(d) A finance lender or broker may not make or broker a*
5 *residential mortgage loan unless that loan is offered by, negotiated*
6 *by, or applied for through a licensed mortgage loan originator.*

7 *(e) Every licensee engaged in the business of making or*
8 *brokering residential mortgage loans and every mortgage loan*
9 *originator licensed under this division shall register with and*
10 *maintain a valid unique identifier issued by the Nationwide*
11 *Mortgage Licensing System and Registry.*

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

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

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

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

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

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

35 *(e) A new application shall not be required for a change in the*
36 *address of an existing location previously licensed under this*
37 *division. However, the licensee shall comply with the requirements*
38 *of Section 22153.*

39 *(f) Notwithstanding subdivisions (a) to (e), inclusive, the*
40 *commissioner may by rule require an application to be made*

1 *through the Nationwide Mortgage Licensing System and Registry,*
2 *and may require fees, fingerprints, financial statements, supporting*
3 *documents, changes of address, and any other information, and*
4 *amendments or modifications thereto, to be submitted in the same*
5 *manner.*

6 SEC. 14. Section 22101.5 of the Financial Code is amended
7 to read:

8 22101.5. (a) The commissioner shall submit to the Department
9 of Justice fingerprint images and related information required by
10 the Department of Justice of all finance lender and broker license
11 candidates, as defined by subdivision (a) of Section 22101, for
12 purposes of obtaining information as to the existence and content
13 of a record of state or federal convictions, state or federal arrests,
14 and information as to the existence and content of a record of state
15 or federal arrests for which the Department of Justice establishes
16 that the person is free on bail or on his or her own recognizance
17 pending trial or appeal.

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

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

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

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

33 *(f) Notwithstanding subdivisions (a) to (e), inclusive, the*
34 *commissioner may by rule require fingerprints submitted by an*
35 *applicant to be submitted to the Nationwide Mortgage Licensing*
36 *System and Registry in addition to the Department of Justice.*

37 SEC. 15. Section 22102 of the Financial Code is amended to
38 read:

39 22102. (a) A finance lender or broker licensee seeking to
40 engage in business at a new location shall submit an application

1 for a branch office license to the commissioner at least 10 days
2 before engaging in business at a new location and pay the fee
3 required by Section 22103. The commissioner may require an
4 applicant seeking to engage in business at a new location to submit
5 its application, or parts thereof, through the Nationwide Mortgage
6 Licensing System and Registry.

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

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

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

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

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

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

28 SEC. 16. Section 22103 of the Financial Code is amended to
29 read:

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

39 SEC. 17. Section 22104 of the Financial Code is amended to
40 read:

1 22104. (a) The applicant shall file with the application for a
2 finance lender or broker license financial statements prepared in
3 accordance with generally accepted accounting principles and
4 acceptable to the commissioner that indicate a net worth of at least
5 twenty-five thousand dollars (\$25,000). Except as provided in
6 subdivision (b), a licensee shall maintain a net worth of at least
7 twenty-five thousand dollars (\$25,000) at all times.

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

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

15 SEC. 18. Section 22105.1 is added to the Financial Code, to
16 read:

17 22105.1. (a) An applicant for a mortgage loan originator
18 license shall apply ~~in a form as prescribed by the commissioner.~~
19 ~~Each 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.~~ *by submitting the uniform form*
23 *prescribed for such purpose by the Nationwide Mortgage Licensing*
24 *System and Registry. The commissioner may require the submission*
25 *of additional information or supporting documentation to the*
26 *department.*

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

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

36 (1) Fingerprint images and related information, for purposes of
37 performing a federal, or both a state and federal, criminal history
38 background check.

39 (2) Personal history and experience in a form prescribed by the
40 Nationwide Mortgage Licensing System and Registry, including

1 the submission of authorization for the Nationwide Mortgage
2 Licensing System and Registry and the commissioner to obtain
3 both of the following:

4 (A) An independent credit report obtained from a consumer
5 reporting agency.

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

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

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

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

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

34 SEC. 19. Section 22105.2 is added to the Financial Code, to
35 read:

36 22105.2. (a) The commissioner is authorized to establish
37 relationships or contracts with the Nationwide Mortgage Licensing
38 System and Registry or other entities designated by the Nationwide
39 Mortgage Licensing System and Registry to collect and maintain

1 records and process transaction fees or other fees related to
2 licensees or other persons subject to this division.

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

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

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

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

21 SEC. 20. Section 22105.3 is added to the Financial Code, to
22 read:

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

36 (b) For these purposes, the commissioner is authorized to enter
37 agreements or share arrangements with other governmental
38 agencies, the Conference of State Bank Supervisors, the American
39 Association of Residential Mortgage Regulators, or other

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

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

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

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

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

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

22 22105.4. The commissioner shall regularly report violations
23 of this division, as well as enforcement actions and other relevant
24 information, to the Nationwide Mortgage Licensing System and
25 Registry, to the extent that information is public record.

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

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

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

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

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

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

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

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

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

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

(d) If a licensee fails to pay the assessment on or before the 31st day of January following the day upon which payment is due, the

1 commissioner may by order summarily suspend or revoke the
2 certificate issued to the licensee. If, after an order is made, a request
3 for hearing is filed in writing within 30 days, and a hearing is not
4 held within 60 days thereafter, the order is deemed rescinded as
5 of its effective date. During any period when its certificate is
6 revoked or suspended, a finance lender or broker licensee and any
7 mortgage loan originator licensee employed by the finance lender
8 or broker shall not conduct business pursuant to this division except
9 as may be permitted by order of the commissioner. However, the
10 revocation, suspension, or surrender of a certificate shall not affect
11 the powers of the commissioner as provided in this division.

12 *(e) The commissioner shall, by rule, establish the timelines,*
13 *fees, and assessments applicable to applicants for original*
14 *mortgage loan originator licenses, license renewals, and license*
15 *changes under this division.*

16 *(f) Notwithstanding subdivisions (a) to (e), inclusive, the*
17 *commissioner may by rule require licensees to pay assessments*
18 *through the Nationwide Mortgage Licensing System and Registry.*

19 SEC. 23.5. Section 22108 of the Financial Code is amended
20 to read:

21 22108. (a) The commissioner may by ~~regulation~~ rule require
22 licensees to file, at the times that he or she may specify, the
23 information that he or she may reasonably require regarding any
24 changes in the information provided in any application filed
25 pursuant to this division.

26 *(b) The commissioner may by rule require a licensee to file*
27 *information through the Nationwide Mortgage Licensing System*
28 *and Registry.*

29 SEC. 24. Section 22109 of the Financial Code is amended to
30 read:

31 22109. (a) Upon reasonable notice and opportunity to be heard,
32 the commissioner may deny the application for a finance lender
33 or broker license for any of the following reasons:

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

36 (2) The applicant or an officer, director, general partner, person
37 responsible for the applicant's lending activities in this state, or
38 person owning or controlling, directly or indirectly, 10 percent or
39 more of the outstanding interests or equity securities of the
40 applicant has, within the last 10 years, been convicted of or pleaded

1 nolo contendere to a crime, or committed an act involving
2 dishonesty, fraud, or deceit, if the crime or act is substantially
3 related to the qualifications, functions, or duties of a person
4 engaged in business in accordance with this division.

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

12 (4) *The applicant employs a mortgage loan originator who is*
13 *not licensed, or has not initiated an application to become licensed,*
14 *pursuant to this division.*

15 (b) The application shall be considered withdrawn within the
16 meaning of this section if the applicant fails to respond to a written
17 notification of a deficiency in the application within 90 days of
18 the date of the notification.

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

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

26 22109.1. The commissioner shall not issue a mortgage loan
27 originator license unless the commissioner makes, at a minimum,
28 the following findings:

29 (a) The applicant has never had a mortgage loan originator
30 license revoked in any governmental jurisdiction, except that a
31 subsequent formal vacation of a revocation shall not be deemed a
32 revocation.

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

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

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

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

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

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

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

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

15 SEC. 26. Section 22109.2 is added to the Financial Code, to
16 read:

17 22109.2. (a) An applicant for a mortgage loan originator
18 license shall complete at least 20 hours of education approved in
19 accordance with subdivision (b). The education shall include at
20 least the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 SEC. 28. Section 22109.4 is added to the Financial Code, to
8 read:

9 22109.4. (a) A mortgage loan originator shall comply with
10 the requirements of this section on or before December 31 of every
11 year.

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

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

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

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

21 (c) The license of a mortgage loan originator failing to satisfy
22 the minimum standards for license renewal shall expire at midnight
23 on January 31, except as provided in subdivision (h) of Section
24 22109.5. The commissioner may adopt procedures for the
25 reinstatement of expired licenses consistent with the standards
26 established by the Nationwide Mortgage Licensing System and
27 Registry.

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

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

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

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

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

39 (b) For purposes of this section, continuing education courses
40 shall be reviewed and approved by the Nationwide Mortgage

1 Licensing System and Registry. Review and approval of a
2 continuing education course shall include review and approval of
3 the course provider.

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

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

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

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

17 (2) May not take the same approved course in the same or
18 successive years to meet the annual requirements for continuing
19 education.

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

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

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

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

38 SEC. 30. Section 22109.6 is added to the Financial Code, to
39 read:

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

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

SEC. 30.5. Section 22112 of the Financial Code is amended to read:

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

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

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

6 *(c) The commissioner shall by rule require a higher bond*
7 *amount for a licensee employing one or more mortgage loan*
8 *originators, based on the dollar amount of residential mortgage*
9 *loans originated by that licensee and any mortgage loan*
10 *originators employed by that licensee. Every mortgage loan*
11 *originator employed by the licensee shall be covered by the surety*
12 *bond.*

13 SEC. 31. Section 22151 of the Financial Code is amended to
14 read:

15 22151. (a) A finance lender license, broker license, and the
16 license of every mortgage loan originator employed by a lender
17 or finance broker, along with any currently effective order of the
18 commissioner approving a different name pursuant to Section
19 22155, shall be conspicuously posted in the place of business
20 authorized by the license.

21 (b) A license is not transferable or assignable. A license issued
22 to a partnership or a limited partnership is not transferred or
23 assigned within the meaning of this section by the death,
24 withdrawal, or admission of a partner, general partner, or limited
25 partner, unless the death, withdrawal, or admission dissolves the
26 partnership to which the license was issued.

27 SEC. 32. Section 22152 of the Financial Code is amended to
28 read:

29 22152. A finance lender or broker licensee shall maintain only
30 one place of business under a duplicate or original license issued
31 pursuant to Section 22101 or 22102. The commissioner may issue
32 more than one license to the same licensee upon compliance with
33 all the provisions of this division governing an original issuance
34 of a license.

35 SEC. 33. Section 22153 of the Financial Code is amended to
36 read:

37 22153. (a) If a finance lender or broker licensee seeks to
38 change its place of business to a street address other than that
39 designated in its license, the licensee shall provide notice to the
40 commissioner at least 10 days prior to the change. The

1 commissioner shall notify the licensee within 10 days if the
2 commissioner disapproves the change, and if the commissioner
3 does not notify the licensee of disapproval within 10 days, the
4 change in address shall be deemed approved. The commissioner
5 may require an applicant to submit its application to change its
6 place of business through the Nationwide Mortgage Licensing
7 System and Registry.

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

14 SEC. 34. Section 22154 of the Financial Code is amended to
15 read:

16 22154. (a) No licensee shall conduct the business of making
17 loans under this division within any office, room, or place of
18 business in which any other business is solicited or engaged in, or
19 in association or conjunction therewith, except as is authorized in
20 writing by the commissioner upon the commissioner's finding that
21 the character of the other business is such that the granting of the
22 authority would not facilitate evasions of this division or of the
23 rules and regulations made pursuant to this division. An
24 authorization once granted remains in effect until revoked by the
25 commissioner. The commissioner may authorize the other business
26 through the Nationwide Mortgage Licensing System and Registry.

27 (b) The products or services of an affiliated corporation of the
28 licensee that is a supervised financial institution, or a parent or
29 subsidiary of a supervised financial institution that is an affiliate
30 of the licensee, may be provided, offered, or sold at the licensed
31 location of the licensee without authorization by the commissioner
32 pursuant to subdivision (a) if (1) the activity is not prohibited by,
33 or in violation of, the laws applicable to the affiliate or supervised
34 financial institution, and (2) the products and services are not
35 offered and sold in a manner that restricts the ability of the
36 borrower or customer to individually select or reject a product or
37 service that is offered.

38 (c) The following definitions govern the construction of this
39 section:

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

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

12 SEC. 35. Section 22155 of the Financial Code is amended to
13 read:

14 22155. No finance lender, broker, or mortgage loan originator
15 licensee shall transact the business licensed or make any loan
16 provided for by this division under any other name or at any other
17 place of business than that named in the license except pursuant
18 to a currently effective written order of the commissioner
19 authorizing the other name or other place of business. The
20 commissioner’s order, while effective, shall be deemed to amend
21 the original license issued pursuant to Section 22105 or 22109.1.
22 Notwithstanding any provision of this section, a licensee may make
23 any loan and engage in any other business provided for by this
24 division, other than the business described in subdivision (b) of
25 Section 22154, at a place other than the licensed location under
26 either of the following conditions:

27 (a) The borrower requests, either orally or in writing, that a loan
28 be initiated or made at a location other than the licensee’s licensed
29 location. The use by the licensee of a preprinted solicitation form
30 returned to the licensee by the borrower shall not constitute a
31 request by the borrower that a loan be initiated or made at a
32 location other than the licensee’s licensed location.

33 (b) The licensee makes a solicitation or advertises for, or makes
34 an offer of, a loan displayed on “home pages” or similar methods
35 by the licensee on the Internet, the World Wide Web, or similar
36 proprietary or common carrier electronic systems, and the
37 prospective borrower may transmit information over these
38 electronic systems to the licensee in connection with the licensee’s
39 offer to make a loan.

1 SEC. 36. Section 22156 of the Financial Code is amended to
2 read:

3 22156. Finance lender, broker, and mortgage loan originator
4 licensees shall keep and use in their business, books, accounts,
5 and records which will enable the commissioner to determine if
6 the licensee is complying with the provisions of this division and
7 with the rules and regulations made by the commissioner. On any
8 loan secured by real property in which loan proceeds were
9 disbursed to an independent escrowholder, the licensee shall retain
10 records and documents as set forth by rules of the commissioner
11 adopted pursuant to Section 22150. Upon request of the
12 commissioner, licensees shall file an authorization for disclosure
13 to the commissioner of financial records of the licensed business
14 pursuant to Section 7473 of the Government Code.

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

17 22157. Finance lender, broker, and mortgage loan originator
18 licensees shall preserve their books, accounts, and records,
19 including cards used in the card system, if any, for at least three
20 years after making the final entry on any loan recorded therein.

21 SEC. 38. Section 22159 of the Financial Code is amended to
22 read:

23 22159. (a) Each finance lender and broker licensee shall file
24 an annual report with the commissioner, on or before the 15th day
25 of March, giving the relevant information that the commissioner
26 reasonably requires concerning the business and operations
27 conducted by the licensee within the state during the preceding
28 calendar year for each licensed place of business. The individual
29 annual reports filed pursuant to this section shall be made available
30 to the public for inspection except, upon request in the annual
31 report to the commissioner, the balance sheet contained in the
32 annual report of a sole proprietor or any other nonpublicly traded
33 persons. "Nonpublicly traded person" for purposes of this section
34 means persons with securities owned by 35 or fewer individuals.
35 The report shall be made under oath and in the form prescribed by
36 the commissioner.

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

39 (c) The commissioner may require a licensee that employs one
40 or more mortgage loan originators to submit to the Nationwide

1 Mortgage Licensing System and Registry reports of condition,
2 which shall be in the form and shall contain the information as the
3 Nationwide Mortgage Licensing System and Registry may require.

4 *(d) The commissioner may by rule or order require a mortgage*
5 *loan originator to submit reports of condition to the Nationwide*
6 *Mortgage Licensing System and Registry, instead of the reports*
7 *of condition required of his or her employer pursuant to subdivision*
8 *(c).*

9 SEC. 39. Section 22168 of the Financial Code is amended to
10 read:

11 22168. (a) The commissioner may, after appropriate notice
12 and opportunity for hearing, suspend for a period not to exceed 12
13 months or bar a person from any position of employment with a
14 licensee if the commissioner finds that the person has willfully
15 used or claimed without authority a designation or certification of
16 special education, practice, or skill that the person has not attained,
17 or willfully held out to the public a confusingly similar designation
18 or certification for the purpose of misleading the public regarding
19 his or her qualifications or experience.

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

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

35 (d) Persons suspended or barred under this section are prohibited
36 from participating in any business activity of a licensed finance
37 lender, broker, or mortgage loan originator, and from engaging in
38 any business activity on the premises where a licensed finance
39 lender, broker, or mortgage loan originator is conducting its
40 business. This subdivision shall not be construed to prohibit

1 suspended or barred persons from having their personal transactions
2 processed by a licensed finance lender, broker, or mortgage loan
3 originator.

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

6 22169. (a) The commissioner may, after appropriate notice
7 and opportunity for hearing, by order, censure or suspend for a
8 period not exceeding 12 months, or bar from any position of
9 employment, management, or control any finance lender, broker,
10 mortgage loan originator, or any other person, if the commissioner
11 finds either of the following:

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

18 (2) That the person has been convicted of or pleaded nolo
19 contendere to any crime, or has been held liable in any civil action
20 by final judgment, or any administrative judgment by any public
21 agency, if that crime or civil or administrative judgment involved
22 any offense involving dishonesty, fraud, or deceit, or any other
23 offense reasonably related to the qualifications, functions, or duties
24 of a person engaged in the business in accordance with the
25 provisions of this division.

26 (b) Within 15 days from the date of a notice of intention to issue
27 an order pursuant to subdivision (a), the person may request a
28 hearing under the Administrative Procedure Act (Chapter 4.5
29 (commencing with Section 11400) of Division 3 of Title 2 of the
30 Government Code). Upon receipt of a request, the matter shall be
31 set for hearing to commence within 30 days after such receipt
32 unless the person subject to this division consents to a later date.
33 If no hearing is requested within 15 days after the mailing or
34 service of such notice and none is ordered by the commissioner,
35 the failure to request a hearing shall constitute a waiver of the right
36 to a hearing.

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

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

SEC. 40.5. Section 22170 of the Financial Code is amended to read:

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

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

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

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

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

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

SEC. 41.5. Section 22172 is added to the Financial Code, to read:

22172. (a) *The commissioner may do one or more of the following:*

1 (1) Deny, suspend, revoke, condition, or decline to renew a
2 mortgage loan originator license for a violation of this division,
3 or any rules or regulations adopted thereunder.

4 (2) Deny, suspend, revoke, condition, or decline to renew a
5 mortgage loan originator license if an applicant or licensee fails
6 at any time to meet the requirements of Section 22109.1 or 22109.4,
7 or withholds information or makes a material misstatement in an
8 application for a license or license renewal.

9 (3) Order restitution against a mortgage loan originator or any
10 finance lender or broker licensee employing a mortgage loan
11 originator for a violation of this division.

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

15 (5) Issue orders or directives to mortgage loan originators under
16 this division as follows:

17 (A) Order or direct a mortgage loan originator or any finance
18 lender or broker licensee employing a mortgage loan originator
19 to desist and refrain from conducting business, including immediate
20 temporary orders to desist and refrain.

21 (B) Order or direct a mortgage loan originator or any finance
22 lender or broker licensee employing a mortgage loan originator
23 to cease any harmful activities or violations of this division,
24 including immediate temporary orders to desist and refrain.

25 (C) Enter immediate temporary orders to cease business under
26 a license issued pursuant to the authority granted under Section
27 22100 if the commissioner determines that the license was
28 erroneously granted or the mortgage loan originator is currently
29 in violation of this division.

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

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

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

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

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

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

13 SEC. 43. Section 22700 of the Financial Code is amended to
14 read:

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

20 (b) *Mortgage loan originator licenses issued under this division*
21 *shall be renewed annually upon the payment of an annual*
22 *assessment, and if renewed by the licensee, shall remain in effect*
23 *until they are surrendered, revoked, or suspended.*

24 ~~(b)~~

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

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

35 22755. It is a violation of this division for a mortgage loan
36 originator to do any of the following:

37 (a) Directly or indirectly employ any scheme, device, or artifice
38 to defraud or mislead borrowers or lenders or to defraud any
39 person.

1 (b) Engage in any unfair or deceptive practice toward any
2 person.

3 (c) Obtain property by fraud or misrepresentation.

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

8 (e) Solicit, advertise, or enter into a contract for specific interest
9 rates, points, or other financing terms unless the terms are actually
10 available at the time of soliciting, advertising, or contracting.

11 (f) Conduct any business covered by this division without
12 holding a valid license as required under this division, or assist or
13 aide and abet any person in the conduct of business under this
14 division without a valid license as required under this division.

15 (g) Fail to make disclosures as required by this division and any
16 other applicable state or federal law, including regulations
17 thereunder.

18 (h) Fail to comply with this division or rules or regulations
19 promulgated under this division, or fail to comply with any other
20 state or federal law, including the rules and regulations thereunder,
21 applicable to any business authorized or conducted under this
22 division.

23 (i) Make, in any manner, any false or deceptive statement or
24 representation including, with regard to the rates, points, or other
25 financing terms or conditions for a residential mortgage loan, or
26 engage in bait and switch advertising.

27 (j) Negligently make any false statement or knowingly and
28 willfully make any omission of material fact in connection with
29 any information or reports filed with a governmental agency or
30 the Nationwide Mortgage Licensing System and Registry or in
31 connection with any investigation conducted by the commissioner
32 or another governmental agency.

33 (k) Make any payment, threat, or promise, directly or indirectly,
34 to any person for the purposes of influencing the independent
35 judgment of the person in connection with a residential mortgage
36 loan, or make any payment, threat, or promise, directly or
37 indirectly, to any appraiser of a property, for the purposes of
38 influencing the independent judgment of the appraiser with respect
39 to the value of the property.

1 (l) Collect, charge, attempt to collect or charge, or use or propose
2 any agreement purporting to collect or charge any fee prohibited
3 by this division.

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

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

9 SEC. 45. Section 50002 of the Financial Code is amended to
10 read:

11 50002. (a) No person shall engage in the business of making
12 residential mortgage loans or servicing residential mortgage loans,
13 in this state, without first obtaining a license from the commissioner
14 in accordance with the requirements of Chapter 2 (commencing
15 with Section 50120) or Chapter 3 (commencing with Section
16 50130), and any rules promulgated by the commissioner under
17 this law, unless a person or transaction is excepted from a definition
18 or exempt from licensure by a provision of this law or a rule of
19 the commissioner.

20 *(b) An employee of a licensee or of a person exempt from*
21 *licensure is not required to be licensed when acting within the*
22 *scope of his or her employment and shall be exempt from any other*
23 *law from which his or her employer is exempt, except that an*
24 *individual who meets the definition of a mortgage loan originator*
25 *in subdivision (u) of Section 50003 shall be subject to this division.*

26 ~~(b)~~

27 (c) The following persons are exempt from subdivision (a):

28 (1) Any bank, trust company, insurance company, or industrial
29 loan company doing business under the authority of, or in
30 accordance with, a license, certificate, or charter issued by the
31 United States or any state, district, territory, or commonwealth of
32 the United States that is authorized to transact business in this
33 state.

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

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

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

3 (5) A wholly owned service corporation of a savings and loan
4 association or savings bank organized under the laws of this state
5 or the wholly owned service corporation of a federally chartered
6 savings and loan association or savings bank that is authorized to
7 transact business in this state.

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

10 (7) An employee or employer pension plan making residential
11 mortgage loans only to its participants, or a person making those
12 loans only to its employees or the employees of a holding company,
13 or an owner who controls that person, affiliate, or subsidiary of
14 that person.

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

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

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

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

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

30 (13) A registered mortgage loan originator described in
31 subdivision-~~(d)~~ (e).

32 ~~(e)~~

33 (d) An individual, unless specifically exempted under
34 subdivision-~~(d)~~ (e), shall not engage in the business of a mortgage
35 loan originator with respect to any dwelling located in this state
36 without first obtaining and maintaining annually a license in
37 accordance with the requirements of Chapter 3.5 (commencing
38 with Section 50140) and any rules promulgated by the
39 commissioner under that chapter. Each licensed mortgage loan

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

3 ~~(d)~~

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

10 ~~(e)~~

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

17 SEC. 46. Section 50002.5 is added to the Financial Code, to
18 read:

19 50002.5. ~~(a) A residential mortgage lender or servicer shall~~
20 ~~not employ a mortgage loan originator unless the mortgage loan~~
21 ~~originator has first obtained a~~ *Every licensee engaging in the*
22 *business of making, servicing, or servicing residential mortgage*
23 *loans shall require that every mortgage loan originator employed*
24 *or compensated by that licensee obtains and maintains a mortgage*
25 *loan originator license from the commissioner under this division*
26 *or Division 9 (commencing with Section 22000), or has first*
27 *obtained a license endorsement from the commissioner of Real*
28 *Estate pursuant to Article 2.1 (commencing with Section 10166.01)*
29 *of Chapter 2 of Division 4 of the Business and Professions Code.*

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

33 ~~(c) Every mortgage loan originator licensed under this division~~
34 ~~shall be employed by, and subject to the supervision of, a licensed~~
35 ~~residential mortgage lender or servicer. A residential mortgage~~
36 ~~lender or servicer may not make or broker a residential mortgage~~
37 ~~loan unless that loan is negotiated by or applied for through a~~
38 ~~licensed mortgage loan originator.~~

39 (d) Every licensee engaged in the business of making, servicing,
40 or making and servicing residential mortgage loans and every

mortgage loan originator licensed under this division shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

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

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

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

(b) “Borrower” means the loan applicant.

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

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

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

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

(g) “Engage in the business” means the dissemination to the public, or any part of the public, by means of written, printed, or electronic communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communications media, of any information relating to the making of residential mortgage loans, the servicing of residential mortgage loans, or both. “Engage in the business” also means,

1 without limitation, making residential mortgage loans or servicing
2 residential mortgage loans, or both.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Interest-bearing obligations.

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

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

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

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

(ii) Sold to an institutional investor.

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

(k) “Institutional lender” means the following:

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

(2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial loan company, or insurance company, or service or investment company that is wholly owned and controlled by one of the preceding entities, doing business under the authority of and in accordance with a license, certificate,

1 or charter issued by the United States or any state, district, territory,
2 or commonwealth of the United States.

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

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

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

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

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

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

26 (p) “Mortgage loan,” “residential mortgage loan,” or “home
27 mortgage loan” means a federally ~~regulated~~ *related* mortgage loan
28 as defined in Section 3500.2 of Title 24 of the Code of Federal
29 Regulations, or a loan made to finance construction of a one-to-four
30 family dwelling.

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

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

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

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

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

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

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

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

25 (x) “Service” or “servicing” means receiving more than three
26 installment payments of principal, interest, or other amounts placed
27 in escrow, pursuant to the terms of a mortgage loan and performing
28 services by a licensee relating to that receipt or the enforcement
29 of its receipt, on behalf of the holder of the note evidencing that
30 loan.

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

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

35 (aa) *For purposes of Sections 50142, 50143, and 50145,*
36 *“nontraditional mortgage product” means any mortgage product*
37 *other than a 30-year fixed rate mortgage.*

38 SEC. 48. Section 50003.5 is added to the Financial Code, to
39 read:

1 50003.5. (a) “Mortgage loan originator” means an individual
2 who, for compensation or gain, or in the expectation of
3 compensation or gain, takes a residential mortgage loan application
4 or offers or negotiates terms of a residential mortgage loan.

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

7 (1) An individual who performs purely administrative or clerical
8 tasks on behalf of a person meeting the definition of a mortgage
9 loan originator, except as provided in subdivision (c) of Section
10 50003.6. The term “administrative or clerical tasks” means the
11 receipt, collection, and distribution of information common for
12 the processing or underwriting of a loan in the mortgage industry
13 and communication with a consumer to obtain information
14 necessary for the processing or underwriting of a residential
15 mortgage loan, to the extent that the communication does not
16 include offering or negotiating loan rates or terms, or counseling
17 consumers about residential mortgage loan rates or terms.

18 (2) An individual ~~that is not compensated by a lender, other~~
19 ~~mortgage loan originator, or by any agent of any lender or other~~
20 ~~mortgage loan originator.~~ *who solely renegotiates terms for existing*
21 *mortgage loans held or serviced by his or her employer and who*
22 *does not otherwise act as a mortgage originator, unless the United*
23 *States Department of Housing and Urban Development or a court*
24 *of competent jurisdiction determines that the SAFE Act requires*
25 *that employee to be licensed as a mortgage originator under state*
26 *laws implementing the SAFE Act.*

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 residential mortgage lender or residential*
28 *mortgage servicer license* and a mortgage loan originator license
29 under this division. ~~Each independent contractor loan processor~~
30 ~~or underwriter licensed as a mortgage loan originator shall have~~
31 ~~and maintain a valid unique identifier issued by the Nationwide~~
32 ~~Mortgage Licensing System and Registry.~~

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

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

38 (b) A licensee may not engage in the business as a residential
39 mortgage lender under a name other than the name that appears
40 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~~, by rule,
24 *require an applicant for a residential mortgage lender or servicer*
25 *license or a residential mortgage lender or servicer* licensee to
26 make some or all filings with the commissioner through the
27 Nationwide Mortgage Licensing System and Registry.

28 (g) *The commissioner may, by rule, require licensees to pay*
29 *assessments through the Nationwide Mortgage Licensing System*
30 *and Registry.*

31 SEC. 51. Section 50121 of the Financial Code is amended to
32 read:

33 50121. The commissioner shall issue a residential mortgage
34 lender license upon the satisfaction of all of the following:

35 (a) The filing with the commissioner of a complete and executed
36 application for licensure, which may, at the discretion of the
37 commissioner, include background and experience disclosures
38 required by any of the uniform application forms of the Nationwide
39 Mortgage Licensing System and Registry.

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

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

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

50122. (a) ~~The application for a residential mortgage lender~~ *Except as provided in Section 50120, the information provided on an application for a residential mortgage lender, residential mortgage servicer, or residential mortgage lender and servicer* license shall be sworn testimony on a form prescribed by the commissioner, ~~and shall include a notarized signature~~. If an applicant proposes to engage in business as a residential mortgage loan servicer as well as a residential mortgage lender, this information shall be set forth in the application. The commissioner may issue a license under this chapter to engage in business as a residential mortgage lender or to engage in business as a residential mortgage lender and residential mortgage loan servicer. A person filing an application under this chapter to engage in business as a residential mortgage lender and a residential mortgage loan servicer is not required to file an application under Chapter 3 (commencing with Section 50130).

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

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

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

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

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

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

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

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

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

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

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

26 SEC. 53. Section 50123 of the Financial Code is amended to
27 read:

28 50123. (a) A residential mortgage lender license shall ~~be~~
29 ~~renewed annually upon the payment of the annual fee or~~
30 ~~assessment, and if renewed, shall~~ remain in effect until suspended,
31 surrendered, or revoked.

32 (b) A residential mortgage lender licensee that ceases to engage
33 in the business regulated by this division and desires to no longer
34 be licensed shall inform the commissioner in writing and, at that
35 time, surrender the license and all other indicia of licensure to the
36 commissioner. The licensee shall file a plan for the withdrawal
37 from regulated business, and the plan shall include a timetable for
38 the disposition of the business. The plan shall also include a closing
39 audit, review, or other agreed upon procedures performed by an
40 independent certified public accountant prescribed by rule or order

1 of the commissioner. Upon receipt of the written notice and plan,
2 the commissioner shall review the plan and, if satisfactory to the
3 commissioner, shall accept the surrender of the license. A license
4 is not surrendered until its tender is accepted in writing by the
5 commissioner after a review, and a finding has been made on the
6 licensee's plan required to be filed by this section, and a
7 determination has been made that there is no violation of this law.

8 (c) A residential mortgage lender or servicer licensee may not
9 surrender its license under this division and, under the authority
10 of a real estate license, subsequently engage in residential mortgage
11 lending or servicing activities that are subject to this division,
12 unless the licensee has been licensed under this division for a
13 period of five years or more.

14 ~~(d) The commissioner may, in his or her discretion, require a~~
15 ~~residential mortgage lender licensee whose license has expired to~~
16 ~~comply with the requirements for the surrender of a license in this~~
17 ~~section.~~

18 SEC. 54. Section 50124 of the Financial Code is amended to
19 read:

20 50124. (a) A residential mortgage lender *or servicer* shall do
21 all of the following:

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

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

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

30 (4) Disburse funds in accordance with its agreements and to
31 make a good faith and reasonable effort to effect closing in a timely
32 manner.

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

1 (6) File with the commissioner an amendment to its application
2 prior to any material change in the information contained in the
3 application for licensure, including, without limitation, the plan
4 of operation. The commissioner shall, within 20 business days of
5 receiving a completed amendment to the application, or within a
6 longer time if agreed to by the licensee, approve or disapprove the
7 effectiveness of the proposed amendment.

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

10 (8) Submit to periodic examination by the commissioner as
11 required by this division.

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

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

19 (11) Comply with all applicable state and federal tax return
20 filing requirements.

21 (12) *Refrain from employing, or paying a commission or other*
22 *fee to, a mortgage loan originator who is not licensed in this state,*
23 *unless the individual is exempt from licensure.*

24 ~~(12)~~

25 (13) Refrain from committing a crime against the laws of any
26 state or the United States, involving moral turpitude,
27 misrepresentation, fraudulent or dishonest dealing, or fraud, and
28 disclose to the commissioner any final judgment entered against
29 it in a civil action upon grounds or allegations of fraud,
30 misrepresentation, or deceit.

31 ~~(13)~~

32 (14) Refrain from engaging in conduct that would be cause for
33 denial of a license.

34 ~~(14)~~

35 (15) Remain solvent.

36 ~~(15)~~

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

39 ~~(16)~~

1 (17) Comply with any other requirement established by rule of
2 the commissioner.

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

5 SEC. 55. Section 50125 of the Financial Code is amended to
6 read:

7 50125. The commissioner may refuse to issue a residential
8 mortgage lender *or servicer* license if any of the following apply:

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

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

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

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

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

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

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

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

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

39 (b) The application shall be considered withdrawn within the
40 meaning of this section if the applicant fails to respond to a written

notification of a deficiency in the application within 90 days of the date of the notification.

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

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

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

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

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

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

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

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

(2) Engage, pursuant to a written agency contract with an institutional lender specified in paragraph (1), (2), or (4) of subdivision (k) of Section 50003, in the business of soliciting, processing applications, or applying residential loan underwriting criteria, but not engage in the business of brokerage services pursuant to this subdivision, for residential mortgage loans for that lender, using or advancing the funds of that lender, provided that no fees or charges may be demanded or collected by the residential mortgage lender licensee for any performance or service, except

1 fees demanded by, or collected on behalf of, the institutional lender,
2 and that the licensee gives a written disclosure to the borrower, as
3 soon as practicable but prior to loan closing, identifying the
4 licensee and stating that the licensee is not the lender in the
5 transaction but has contracted to provide soliciting, processing, or
6 underwriting services for the lender. Separate schedules of the
7 number and principal amount of the loans processed and
8 underwritten shall be included in the licensee's annual report
9 required by subdivision (a) of Section 50401.

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

18 SEC. 60. Section 50130 of the Financial Code is amended to
19 read:

20 50130. (a) A mortgage servicer shall file an application for
21 licensure under this chapter with the commissioner to service
22 mortgage loans in this state by satisfying the requirements of this
23 chapter and the applicable provisions, as determined by the
24 commissioner, of Chapter 2 (commencing with Section 50120).

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

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

30 (2) Paying the investigation and application fees required by
31 Section 50121.

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

33 (4) Complying with the applicable provisions of Chapter 2
34 (commencing with Section 50120).

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

38 (d) The commissioner may, pursuant to Section 50321, order a
39 licensee to cease any other business conducted at any location
40 where the licensee operates under the authority of a residential

1 mortgage servicer license, if the commissioner finds that the
2 conduct of that business has facilitated evasions of this division
3 or the rules adopted pursuant to this division, or that the conduct
4 of that business is in violation of any law to which that business
5 is subject.

6 (e) A license for a business location outside this state shall
7 constitute an agreement by the mortgage servicer to, at the
8 discretion of the commissioner, either (1) make the licensee's
9 books, accounts, papers, records, and files available to the
10 commissioner or the commissioner's representatives in this state
11 within 10 calendar days of a request from the commissioner or,
12 (2) pay the reasonable expenses for travel, meals, and lodging of
13 the commissioner or the commissioner's representatives incurred
14 during an investigation or examination made at the licensee's
15 location outside this state.

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

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

25 ~~(h) If renewed through the payment of the annual assessment~~
26 ~~or fee, a~~ A license shall remain in effect until suspended,
27 surrendered, or revoked.

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

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

33
34 CHAPTER 3.5. MORTGAGE LOAN ORIGINATORS
35

36 50140. ~~(a) Applicants for a mortgage loan originator license~~
37 ~~shall apply in a form as prescribed by the commissioner. Each~~
38 ~~form shall contain content as set forth by rule, regulation,~~
39 ~~instruction, or procedure of the commissioner and may be changed~~
40 ~~or updated as necessary by the commissioner in order to carry out~~

~~the purposes of this division. An applicant for a license as a mortgage loan originator shall apply by submitting the uniform form prescribed for that purpose by the Nationwide Mortgage Licensing System and Registry. The commissioner may require the submission of additional information or supporting documentation to the department.~~

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

(c) The commissioner shall, by rule, establish the timelines, fees, and assessments applicable to applicants for original mortgage loan originator licenses, license renewals, and license changes under this division.

(d) The commissioner may, by rule, require mortgage loan originator licensees to pay assessments through the Nationwide Mortgage Licensing System and Registry.

~~(e)~~

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

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

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

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

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

~~(f)~~

(f) The commissioner may ask the Nationwide Mortgage Licensing System and Registry to obtain state criminal history background check information on applicants described in

subdivision (a) using the procedures set forth in subdivisions ~~(e)~~
~~and (f)~~; (g) and (h).

(e)

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

(f)

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

(g)

(i) The Department of Justice shall charge a fee sufficient to cover the cost of processing the requests described in this section. 50141. The commissioner shall not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

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

(b) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing and registration, or at any time preceding the date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. For purposes

1 of this subdivision, any pardon of a conviction shall not constitute
2 a conviction.

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

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

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

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

15 *(g) The surety bond of the residential mortgage lender or*
16 *servicer employing the applicant covers the activities of the*
17 *applicant and meets the requirements of Section 50205.*

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.

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

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

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

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

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

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

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

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

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

(4) A licensed mortgage loan originator who fails to maintain 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.

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

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

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

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

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

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

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

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

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

(a) Background checks for:

(1) Criminal history through fingerprint or other databases.

(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 *or the*
4 *commissioner*.

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

7 (c) The setting or resetting as necessary of renewal or reporting
8 dates.

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

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

15
16 CHAPTER 3.6. NATIONWIDE MORTGAGE LICENSING SYSTEM
17 AND REGISTRY
18

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

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

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

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

39 (e) The commissioner shall establish a process where applicants
40 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. 65.5. Section 50204 of the Financial Code is amended*
6 *to read:*

7 50204. A licensee may not do any of the following:

8 (a) Disburse the mortgage loan proceeds in a form other than
9 direct deposit to the borrower's or borrower's designee's account,
10 wire, bank or certified check, ACH funds transfer, or attorney's
11 check drawn on a trust account. An entity may apply to the
12 commissioner for a waiver of the requirements of this subdivision
13 by demonstrating, in a letter application, that it has adopted or will
14 adopt another method of disbursement of loan proceeds that will
15 satisfy the purposes of this subdivision.

16 (b) Fail to disburse funds in accordance with a commitment to
17 make a mortgage loan that is accepted by the applicant.

18 (c) Accept fees at closing that are not disclosed to the borrower
19 on the federal HUD-1 Settlement Statement.

20 (d) Commit an act in violation of Section 2941 of the Civil
21 Code.

22 (e) Obtain or induce an agreement or other instrument in which
23 blanks are left to be filled in after execution.

24 (f) Intentionally delay closing of a mortgage loan for the sole
25 purpose of increasing interest, costs, fees, or charges payable by
26 the borrower.

27 (g) Engage in fraudulent home mortgage underwriting practices.

28 (h) Make payment of any kind, whether directly or indirectly,
29 to an in-house or fee appraiser of a government or private money
30 lending agency, with which an application for a home mortgage
31 has been filed, for the purpose of influencing the independent
32 judgment of the appraiser with respect to the value of real estate
33 that is to be covered by the home mortgage.

34 (i) Engage in any acts in violation of Section 17200 or 17500
35 of the Business and Professions Code.

36 (j) Knowingly misrepresent, circumvent, or conceal, through
37 subterfuge or device, any material aspect or information regarding
38 a transaction to which it is a party.

39 (k) Do an act, whether of the same or a different character than
40 specified in this section, that constitutes fraud or dishonest dealings.

1 (l) Sell more than eight loans in a calendar year made under the
2 authority of this license to a person who is not an institutional
3 investor.

4 (m) Commit an act in violation of Section 1695.13 of the Civil
5 Code.

6 (n) Make or service a loan that is not a residential mortgage
7 loan under the authority of the license.

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

14 (p) *Make or broker a loan that is offered by, negotiated by, or*
15 *applied for through a mortgage loan originator who is not licensed*
16 *in this state through the Nationwide Mortgage Licensing System*
17 *and Registry, unless the mortgage loan originator is exempt from*
18 *licensure.*

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

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

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

8 *(c) The commissioner shall by rule require a higher bond*
9 *amount for a licensee employing one or more mortgage loan*
10 *originators, based on the dollar amount of residential mortgage*
11 *loans originated by that licensee and any mortgage loan*
12 *originators employed by that licensee. Every mortgage loan*
13 *originator employed by the licensee shall be covered by the surety*
14 *bond.*

15 SEC. 67. Section 50206 of the Financial Code is amended to
16 read:

17 50206. (a) Prior to a change of control of the business of a
18 licensee, the person wishing to acquire control shall submit an
19 application to the commissioner and pay an investigation fee of
20 one hundred dollars (\$100). The application shall contain the
21 information that the commissioner, by rule, may prescribe as
22 necessary to determine that the person meets the requirements of
23 Section 50121.

24 (b) The commissioner shall approve or disapprove the proposed
25 change of control of a licensee in accordance with the provisions
26 of Section 50126.

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

30 SEC. 68. Section 50208 of the Financial Code is amended to
31 read:

32 50208. The license shall state the name of the licensee. If the
33 licensee is a partnership, the license shall state the names of its
34 general partners. If the licensee is a corporation or an association,
35 the license shall state the date and place of the corporation's
36 incorporation or organization. If the licensee is a residential
37 mortgage lender or servicer, the license shall state the address of
38 the licensee's principal business location. The license shall state
39 whether the licensee is licensed as a residential mortgage loan
40 lender or servicer or as a mortgage loan originator.

1 SEC. 69. Section 50209 is added to the Financial Code, to read:
2 50209. The unique identifier of any licensed mortgage loan
3 originator shall be clearly shown on all residential mortgage loan
4 application forms, solicitations, or advertisements, including
5 business cards or Internet Web sites, and any other documents as
6 established by rule, regulation, or order of the commissioner.

7 SEC. 70. Section 50302 of the Financial Code is amended to
8 read:

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

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

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

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

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

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

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

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

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

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

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

SEC. 72.5. *Section 50310 of the Financial Code is amended to read:*

50310. Nothing in this law shall preclude a person, *other than a mortgage loan originator*, whose license has been suspended or revoked, summarily or otherwise, from continuing to service residential mortgage loans pursuant to servicing contracts in existence at the time of the suspension for a reasonable transition period, as determined by the commissioner, after the date of the

1 entry of the final decision in the case suspending or revoking the
2 license.

3 SEC. 73. Section 50317 of the Financial Code is amended to
4 read:

5 50317. (a) Any person who has been convicted of, or pleaded
6 nolo contendere to any crime specified in subdivision (b) within
7 the past 10 years or has been held liable in any civil action by final
8 judgment or any administrative judgment by any public agency
9 within the past seven years, of any of the provisions specified in
10 subdivision (b), shall not serve as an officer, director, partner,
11 shareholder controlling 10 percent or more of the ownership
12 interests, trustee, or employee of a residential mortgage lender or
13 residential mortgage loan servicer. This subdivision shall not apply
14 to any person whose office, employment, ownership interest, or
15 other participation in the business of a licensed residential mortgage
16 lender or residential mortgage loan servicer commenced prior to
17 January 1, 1995, or whose criminal conviction, plea, or judgment
18 occurred prior to January 1, 1995.

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

22 (1) Offenses specified in Chapter 18 (commencing with Section
23 3350) of Division 1.

24 (2) Offenses specified in Article 4 (commencing with Section
25 5300) of Chapter 1 of Division 2.

26 (3) Offenses specified in Article 8 (commencing with Section
27 14750) of Chapter 4 of Division 5.

28 (4) Offenses specified in Chapter 7 (commencing with Section
29 17700) of Division 6.

30 (5) Offenses specified in Chapter 6 (commencing with Section
31 18435) of Division 7.

32 (6) Offenses specified in provisions of the laws of the United
33 States added or amended by the federal Financial Institutions
34 Reform, Recovery and Enforcement Act of 1989 (Public Law
35 101-73).

36 (7) Offenses involving robbery, burglary, theft, embezzlement,
37 fraud, fraudulent conversion or misappropriation of property,
38 forgery, bookmaking, receiving stolen property, counterfeiting,
39 extortion, checks, credit cards, or computer violations specified
40 in Section 502 of the Penal Code. For the purpose of this section,

1 but not Section 50318, an offense does not include a conviction
2 for which the person has obtained a certificate of rehabilitation
3 from a court of competent jurisdiction under Section 1203.4 or
4 4852.13 of the Penal Code or a similar certificate of rehabilitation
5 obtained in a foreign jurisdiction.

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

16 (d) Any state summary criminal history information obtained
17 pursuant to this section shall be kept confidential and no recipient
18 shall disclose the contents other than for the purpose of acquisition
19 of an ownership interest in or other participation in the business
20 of a licensed residential mortgage lender or residential mortgage
21 loan servicer.

22 (e) Any person who knowingly violates subdivision (a),
23 including, but not limited to, any residential mortgage lender or
24 residential mortgage loan servicer who permits an ownership
25 interest in or other participation in the business of a residential
26 mortgage lender or residential mortgage loan servicer in violation
27 of subdivision (a) shall, upon conviction, be subject to punishment
28 as set forth in Section 50500.

29 (f) Nothing in this section shall be construed to permit the
30 reinstatement of any person barred by the commissioner pursuant
31 to Section 50320 nor to prohibit the commissioner from bringing
32 any action pursuant to Section 50320.

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

39 (h) For purposes of this section, the term "employee" means
40 (1) a mortgage loan originator, including a loan officer or other

1 individual who negotiates agreements with the public, or (2) an
2 individual with access to or responsibility for trust funds held by
3 the licensee.

4 SEC. 74. Section 50318 of the Financial Code is amended to
5 read:

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

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

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

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

39 (c) Upon receipt of a notice of intention to issue an order
40 pursuant to this section, the person who is the subject of the

1 proposed order is immediately prohibited from engaging in any
2 activities subject to licensure under the law.

3 (d) Persons suspended or barred under this section are prohibited
4 from participating in any business activity of a licensed residential
5 mortgage lender, residential mortgage loan servicer, or mortgage
6 loan originator and from engaging in any business activity on the
7 premises where a licensed residential mortgage lender, residential
8 mortgage loan servicer, or mortgage loan originator is conducting
9 its business. This subdivision shall not be construed to prohibit
10 suspended or barred persons from having their personal transactions
11 processed by a licensed residential mortgage lender, residential
12 mortgage loan servicer, or mortgage loan originator.

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

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

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

26 SEC. 75. Section 50320 of the Financial Code is amended to
27 read:

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

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

1 50325. The commissioner may immediately revoke the
2 residential mortgage lender's, residential mortgage loan servicer's,
3 or mortgage loan originator's license if the licensee fails to comply
4 with any order issued under Section 50318, 50319, 50321, 50322,
5 or 50503. The commissioner shall not revoke the license if, within
6 10 days from the effective date of the revocation order, the licensee
7 secures a court order restraining the enforcement of the
8 commissioner's revocation order.

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

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

18 SEC. 78. Section 50333 of the Financial Code is amended to
19 read:

20 50333. (a) The commissioner shall apply the guidance on
21 nontraditional mortgage product risks published on November 14,
22 2006, by the Conference of State Bank Supervisors and the
23 American Association of Residential Mortgage Regulators, and
24 the Statement on Subprime Mortgage Lending published on July
25 17, 2007, by the aforementioned entities and the National
26 Association of Consumer Credit Administrators, to licensees.

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

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

35 SEC. 79. Section 50401 of the Financial Code is amended to
36 read:

37 50401. (a) In addition to other fees and reimbursements
38 required to be paid under this division, each residential mortgage
39 lender or servicer licensee shall pay to the commissioner an amount
40 equal to the lesser of: (1) its pro rata share of all costs and expenses

(including overhead and the maintenance of a prudent reserve not to exceed 90 days' costs and expenses) that the commissioner reasonably expects to incur in the current fiscal year in the administration of this division and not otherwise recovered by the commissioner under this division or from the State Corporations Fund, plus a deficit or less a surplus actually incurred during the prior fiscal year; or (2) five thousand dollars (\$5,000). The pro rata share shall be the greater of either one thousand dollars (\$1,000) or the sum of: (A) a number derived from the ratio of the aggregate principal amount of the mortgage loans secured by residential real property originated by the licensee to all mortgage loans secured by residential real property originated by all licensees under this division, as shown by the annual financial reports to the commissioner, which number is then multiplied by one-half of the costs and expenses estimated by the commissioner for the current fiscal year; plus (B) a number derived from the ratio of the average value of mortgage loans secured by residential real property serviced by a licensee to the average value of all mortgage loans secured by residential real property serviced by all licensees under this division, as shown by the annual financial reports to the commissioner, which number is then multiplied by one-half of the costs and expenses estimated by the commissioner for the current fiscal year. For the purposes of this section, the "principal amount" of a mortgage loan means the initial total amount a borrower is obligated to repay the lender and the "average value" of loans serviced means the sum of the aggregate dollar value of all mortgage loans secured by residential real property serviced by a licensee, calculated as of the last day of each month in the calendar year just ended, divided by 12.

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

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

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

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

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

SEC. 79.5. Section 50513 is added to the Financial Code, to read:

50513. (a) The commissioner may do one or more of the following:

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

(2) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license if an applicant or licensee fails at any time to meet the requirements of Section 50141 or 50144,

1 or withholds information or makes a material misstatement in an
2 application for a license or license renewal.

3 (3) Order restitution against a mortgage loan originator or any
4 residential mortgage lender or servicer licensee employing a
5 mortgage loan originator for a violation of this division.

6 (4) Impose fines on a mortgage loan originator or any
7 residential mortgage lender or servicer licensee employing a
8 mortgage loan originator pursuant to subdivisions (b), (c), and
9 (d).

10 (5) Issue orders or directives to mortgage loan originators under
11 this division as follows:

12 (A) Order or direct a mortgage loan originator or any
13 residential mortgage lender or servicer licensee employing a
14 mortgage loan originator to desist and refrain from conducting
15 business, including immediate temporary orders to desist and
16 refrain.

17 (B) Order or direct a mortgage loan originator or any
18 residential mortgage lender or servicer licensee employing a
19 mortgage loan originator to cease any harmful activities or
20 violations of this division, including immediate temporary orders
21 to desist and refrain.

22 (C) Enter immediate temporary orders to cease business under
23 a license issued pursuant to the authority granted under Section
24 50002 if the commissioner determines that the license was
25 erroneously granted or the mortgage loan originator is currently
26 in violation of this division.

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

29 (b) The commissioner may impose a civil penalty on a mortgage
30 loan originator or any residential mortgage lender or servicer
31 licensee employing a mortgage loan originator, if the commissioner
32 finds, on the record after notice and opportunity for hearing, that
33 the mortgage loan originator or any residential mortgage lender
34 or servicer licensee employing a mortgage loan originator has
35 violated or failed to comply with any requirement of this division
36 or any regulation prescribed by the commissioner under this
37 division or order issued under authority of this division.

38 (c) The maximum amount of penalty for each act or omission
39 described in subdivision (b) shall be twenty-five thousand dollars
40 (\$25,000).

1 (d) *Each violation or failure to comply with any directive or*
2 *order of the commissioner is a separate and distinct violation or*
3 *failure.*

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

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

6 SEC. 82. Section 50700 of the Financial Code is amended to
7 read:

8 50700. (a) A residential mortgage lender, or a person or
9 employee acting under the authority of a residential mortgage
10 lender's license, including a mortgage loan originator, shall not
11 provide brokerage services to a borrower, except as provided in
12 subdivision (c).

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

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

21 (2) Obtaining or attempting to obtain, on behalf of a borrower,
22 a residential mortgage loan, as defined in subdivision (p) of Section
23 50003, secured by residential real estate, as defined in subdivision
24 (w) of Section 50003, made with the funds of another institutional
25 lender, as defined in paragraphs (1), (2), and (4) of subdivision (k)
26 of Section 50003, but closed in the name of the licensee, for a fee
27 paid by the borrower or the institutional lender.

28 (c) A residential mortgage lender or a mortgage loan originator
29 employed by a residential mortgage lender may provide brokerage
30 services under the authority of the lender's license, if the lender
31 first enters into a written brokerage agreement with the borrower
32 that satisfies the requirements of Section 50701.

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

35 (1) Provide brokerage services through independent contractors.

36 (2) *Provide brokerage services through an employee not licensed*
37 *as a mortgage loan originator.*

38 ~~(2)~~

39 (3) Obtain or attempt to obtain for a borrower a residential
40 mortgage loan that is a "high cost mortgage," referred to in Section

1 152(aa)(1) of the federal Home Ownership and Equity Protection
2 Act of 1994, as amended (15 U.S.C. Sec. 1602(aa)).

3 ~~(3)~~

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

8 ~~(4)~~

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

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

13 SEC. 83. Section 50701 of the Financial Code is amended to
14 read:

15 50701. (a) As soon as practical after a borrower requests that
16 the residential mortgage lender licensee arrange a loan to be made
17 by another institutional lender, and before the licensee performs
18 brokerage services for the borrower, the licensee and borrower
19 shall enter into a written loan brokerage agreement that satisfies
20 the requirements of this section.

21 (b) Both the licensee's authorized representative, who shall be
22 a licensed mortgage loan originator, and the borrower shall sign
23 and date the loan brokerage agreement, and the licensee shall
24 deliver a copy of the fully executed loan brokerage agreement to
25 the borrower either upon execution, if the documents are signed
26 in the licensee's office, or within three business days after
27 execution.

28 (c) *The loan brokerage agreement shall include the mortgage*
29 *loan originator's unique identifier.*

30 ~~(e)~~

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

40 ~~(d)~~

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

6 ~~(e)~~

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

11 ~~(f)~~

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

17 (1) Rescind the brokerage agreement.

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

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

23 ~~(g)~~

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

27 ~~(h)~~

28 (i) The loan brokerage agreement shall be the only agreement
29 between the borrower and the licensee with respect to a single
30 loan.

31 ~~(i)~~

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

36 (1) Actual charges to be incurred by the licensee on behalf of
37 the borrower for services from third parties necessary to process
38 the application, such as credit reports, appraisals, inspections, flood
39 certification, and tax service, and, in transactions where those
40 services are provided by the licensee, a charge not to exceed the

1 fee customarily charged for the same or comparable service in the
2 community in which the service was rendered.

3 (2) An application fee.

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

7 (j)

8 (k) Any loan brokerage agreement that provides for the
9 collection of an application fee shall be approved as to form by
10 the commissioner before its use by a licensee, if the agreement
11 meets the following requirements:

12 (1) The agreement specifies the services to be rendered for the
13 application fee.

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

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

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

23 *SEC. 84. Section 50705 of the Financial Code is repealed.*

24 ~~50705. Prior to providing brokerage services for a borrower~~
25 ~~under this chapter, and thereafter once every four years, every~~
26 ~~residential mortgage lender employee who provides brokerage~~
27 ~~services shall complete educational courses equivalent to those~~
28 ~~described in paragraphs (1) and (2) of subdivision (a) of Section~~
29 ~~10170.5 of the Business and Professions Code. This section does~~
30 ~~not impose an additional requirement upon an employee who holds~~
31 ~~a valid real estate license.~~

32 *SEC. 84.*

33 *SEC. 85.* The Legislature finds and declares that Sections 4 6,
34 20, and 62 of this act imposes a limitation on the public's right of
35 access to the meetings of public bodies or the writings of public
36 officials and agencies within the meaning of Section 3 of Article
37 I of the California Constitution. Pursuant to that constitutional
38 provision, the Legislature makes the following findings to
39 demonstrate the interest protected by this limitation and the need
40 for protecting that interest:

1 In order to allow the Department of Real Estate and the
2 Department of Corporations to fully accomplish their goals, it is
3 imperative to protect the interests of those persons submitting
4 information to the departments to ensure that any personal or
5 sensitive business information that this act requires those persons
6 to submit is protected as confidential information.

7 ~~SEC. 85. The provisions of Sections 1 to 6, inclusive, of this~~
8 ~~act shall become operative when the Real Estate Commissioner~~
9 ~~issues a finding that the Nationwide Mortgage Licensing System~~
10 ~~and Registry is capable of two-way electronic communication with~~
11 ~~the enterprise information system maintained by the Department~~
12 ~~of Real Estate. The provisions of Sections 7 to 83, inclusive, of~~
13 ~~this act shall become operative on January 1, 2010. However, no~~
14 ~~person shall be required to have a mortgage loan originator license~~
15 ~~under the California Finance Lenders Law or the California~~
16 ~~Residential Mortgage Lending Act, nor a mortgage loan originator~~
17 ~~license endorsement under the Real Estate Law, before August 1,~~
18 ~~2010.~~

19 *SEC. 86. Every person who is required to hold a mortgage*
20 *loan originator license under the California Finance Lenders Law*
21 *or the California Residential Mortgage Lending Act shall obtain*
22 *that license by July 31, 2010. Every person who is required to hold*
23 *a mortgage loan originator license endorsement under the Real*
24 *Estate Law shall obtain that license endorsement by December*
25 *31, 2010.*

26 ~~SEC. 86.~~

27 *SEC. 87. The provisions of this act are severable. If any*
28 *provision of this act or its application is held invalid, that invalidity*
29 *shall not affect other provisions or applications that can be given*
30 *effect without the invalid provision or application.*

31 ~~SEC. 87.~~

32 *SEC. 88. No reimbursement is required by this act pursuant to*
33 *Section 6 of Article XIII B of the California Constitution because*
34 *the only costs that may be incurred by a local agency or school*
35 *district will be incurred because this act creates a new crime or*
36 *infraction, eliminates a crime or infraction, or changes the penalty*
37 *for a crime or infraction, within the meaning of Section 17556 of*
38 *the Government Code, or changes the definition of a crime within*
39 *the meaning of Section 6 of Article XIII B of the California*
40 *Constitution.*

1 _____
2 CORRECTIONS:
3 Text—Pages 46, 54, and 63.
4 _____

O