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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 *Part 1* of Division 4 of, and to repeal Section 10131.8 of, the Business and Professions Code, to amend Sections 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, 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, 50602, and 50705 of, the Financial Code, and to add

Section 18034 to the Health and Safety Code, relating to mortgages, *and declaring the urgency thereof, to take effect immediately* .

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 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 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.

(5) *This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 10100 of the Business and Professions Code is amended to read:

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

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 Section 10131.8 of the Business and Professions Code is repealed.

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

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

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

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

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

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

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

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

13 10150. (a) Application for the real estate broker license
14 examination shall be made in writing to the commissioner. The
15 commissioner may prescribe the format and content of the broker
16 examination application. The application for the broker
17 examination shall be accompanied by the real estate broker license
18 examination fee.

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

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

35 (d) Application for an endorsement to act as a mortgage loan
36 originator, as defined in Section 10166.01, shall be made either
37 electronically or in writing as directed by the commissioner. The
38 commissioner may prescribe the format and content of the
39 mortgage loan originator endorsement application, which shall
40 meet the minimum requirements for licensing of a mortgage loan

1 originator, pursuant to the Secure and Fair Enforcement for
2 Mortgage Licensing Act of 2008 (Public Law 110-289).

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

5 10151. (a) Application for the real estate salesperson license
6 examination shall be made in writing to the commissioner. The
7 commissioner may prescribe the format and content of the
8 salesperson examination application. The application for the
9 salesperson examination shall be accompanied by the real estate
10 salesperson license examination fee.

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

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

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

39 (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~~ 110-289).

12 SEC. 6. Article 2.1 (commencing with Section 10166.01) is
13 added to Chapter 3 of *Part 1 of* Division 4 of the Business and
14 Professions Code, to read:

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

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

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

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

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

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

1 (B) An individual that 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 loan
4 originator, or by any agent of any lender or other mortgage loan
5 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 loan originator, unless the
9 United States Department of Housing and Urban Development or
10 a court of competent jurisdiction determines that the SAFE Act
11 requires such an employee to be licensed as a mortgage loan
12 originator under state laws implementing the SAFE Act.

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

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

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

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

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

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

10166.02. (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 loans secured by real property containing one to four residential units, and any salesperson who acts in a similar capacity under the supervision of that broker, shall notify the department ~~within 30 days of the effective date of this section or upon by January 31, 2010, or within 30 days of~~ commencing that activity, whichever is later. The notification shall be made in writing, as directed, on a form that is acceptable to the commissioner.

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

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

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

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

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

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

(f) A real estate broker who fails to notify the department pursuant to subdivision (a), or who fails to obtain a license endorsement required pursuant to paragraph (2) of subdivision (b), shall be assessed a penalty of fifty dollars (\$50) per day for each day written notification has not been received or a license endorsement has not been obtained, up to and including the 30th day after the first day of the assessment penalty. On and after the 31st day, the penalty is one hundred dollars (\$100) per day, not to exceed a total penalty of ten thousand dollars (\$10,000), regardless

1 of the number of days, until the department receives the written
2 notification or the licensee obtains the license endorsement.
3 Penalties for violations of subdivisions (a) and (b) shall be additive.

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

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

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

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

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

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

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

3 (1) 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. Education may

1 be offered in a classroom, online, or by any other means approved
2 by the Nationwide Mortgage Licensing System and Registry, in
3 accordance with the SAFE Act.

4 (c) A person who successfully completes the education
5 requirements approved by the Nationwide Mortgage Licensing
6 System and Registry in any state other than California shall be
7 granted credit by the commissioner toward completion of the
8 education requirements of this section.

9 (d) Before being issued a license endorsement to act as a
10 mortgage loan originator, an individual shall pass a qualified
11 written test developed or otherwise deemed acceptable by the
12 Nationwide Mortgage Licensing System and Registry and
13 administered by a test provider approved or otherwise deemed
14 acceptable by the Nationwide Mortgage Licensing System and
15 Registry.

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

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

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

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

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

39 (j) A mortgage loan originator who fails to maintain a valid
40 license endorsement for a period of five years or longer or who

1 fails to register as a mortgage loan originator in accordance with
2 applicable California law shall retake the qualified written test.

3 10166.07. (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 one or more loans in a calendar year that are
6 secured by real property containing one to four residential units,
7 shall annually file a business activities report, within 90 days after
8 the end of the broker's fiscal year or within any additional time as
9 the commissioner may allow for filing for good cause. The report
10 shall contain within its scope all of the following information for
11 the fiscal year, relative to the business activities of the broker and
12 those of any other brokers and real estate salespersons acting under
13 that broker's supervision:

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

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

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

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

27 (C) Activities performed under related licenses, including, but
28 not limited to, a license to engage as a finance lender or a finance
29 broker under the California Finance Lenders Law (Division 9
30 (commencing with Section 22000) of the Financial Code), or a
31 license to engage as a residential mortgage lender or residential
32 mortgage loan servicer under the California Residential Mortgage
33 Lending Act (Division 20 (commencing with Section 50000) of
34 the Financial Code).

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

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

1 (A) The total number, aggregate principal amount, lowest
2 interest rate, highest interest rate, and a list of the institutional
3 lenders of record. If the loan was funded by any lender other than
4 an institutional lender, the broker shall categorize the loan as
5 privately funded.

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

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

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

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

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

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

23 (6) For all loans made, brokered, or serviced, the total number
24 and aggregate principal amount of loans funded by institutional
25 lenders, and the total number and aggregate principal amount of
26 loans funded by private lenders.

27 (7) For all loans made, brokered, or serviced, the total number
28 and aggregate principal amount of loans that included a prepayment
29 penalty, the minimum prepayment penalty length, the maximum
30 prepayment penalty length, and the number of loans with
31 prepayment penalties whose length exceeded the length of time
32 before the borrower's loan payment amount could increase.

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

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

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

4 (11) For purposes of this section, an institutional lender has the
5 meaning specified in paragraph (1) of subdivision (c) of Section
6 10232.

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

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

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

30 (e) The commissioner may waive the requirement to submit
31 certain information described in paragraphs (1) to (10), inclusive,
32 of subdivision (a) if the commissioner determines that this
33 information is duplicative of information required by the
34 Nationwide Mortgage Licensing System and Registry, pursuant
35 to Section 10166.08.

36 10166.08. Each mortgage loan originator shall submit reports
37 of condition to the Nationwide Mortgage Licensing System and
38 Registry reports of condition, and those reports shall be in the form
39 and shall contain information as the Nationwide Mortgage
40 Licensing System and Registry may require.

1 10166.09. The minimum standards for renewal of an
2 endorsement as a mortgage loan originator shall include the
3 following:

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

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

9 10166.10. (a) A mortgage loan originator shall complete at
10 least eight hours of continuing education annually, which shall
11 include at least three hours relating to federal law and regulations,
12 two hours of ethics, which shall include instruction on fraud,
13 consumer protection, and fair lending issues, and two hours related
14 to lending standards for the nontraditional mortgage product
15 marketplace.

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

20 (c) The commissioner shall have the authority to substitute any
21 of the courses described in subdivision (a) for the course
22 requirements of Section 10170.5, subject to a finding that the
23 course requirements in subdivision (a) and the course completion
24 standards in subdivision (g) of Section 10166.06 are substantially
25 equivalent to, and meet the intent of, Section 10170.5.

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

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

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

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

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

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

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

15 10166.11. (a) A real estate broker who acts pursuant to Section
16 10131.1 or subdivision (d) or (e) of Section 10131 and who makes,
17 arranges, or services loans secured by real property containing one
18 to four residential units, shall keep documents and records that
19 will properly enable the commissioner to determine whether the
20 residential mortgage brokerage, servicing, and lending functions
21 performed by the broker comply with this division and with all
22 applicable rules and orders made by the commissioner. These
23 documents shall include, at a minimum, the documents described
24 in Section 10148. Upon request of the commissioner, a real estate
25 broker shall file an authorization for disclosure to the commissioner
26 of financial records of his or her licensed business pursuant to
27 Section 7473 of the Government Code.

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

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

8 10166.12. (a) As often as the commissioner deems necessary
9 and appropriate, the commissioner shall examine the affairs of
10 each real estate broker who is required to notify the commissioner
11 or obtain a license endorsement pursuant to Section 10166.02 for
12 compliance with this part. These examinations shall also include
13 a review of the affairs of all real estate brokers and real estate
14 salespersons acting under the supervision of each real estate broker
15 who is required to file reports with the department pursuant to
16 Section 10166.07. The commissioner shall appoint suitable persons
17 to perform these examinations. The commissioner and his or her
18 appointees may examine the books, records, and documents of the
19 licensee, and may examine the licensee's officers, directors,
20 employees, or agents under oath regarding the licensee's
21 operations. The commissioner may cooperate with any agency of
22 the state or federal government, other states, agencies, the Federal
23 National Mortgage Association, or the Federal Home Loan
24 Mortgage Corporation. The commissioner may accept an
25 examination conducted by one of these entities in place of an
26 examination by the commissioner under this section, unless the
27 commissioner determines that the examination does not provide
28 information necessary to enable the commissioner to fulfill his or
29 her responsibilities under this division.

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

38 (c) Penalties collected pursuant to subdivision (b) shall be
39 deposited into the Recovery Account of the Real Estate Fund and
40 shall, upon appropriation by the Legislature, be available for

1 expenditure for the purposes specified in Chapter 6.5 (commencing
2 with Section 10470).

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

11 10166.13. A real estate broker who acts pursuant to Section
12 10131.1 or subdivision (d) or (e) of Section 10131 and who makes,
13 arranges, or services loans secured by real property containing one
14 to four residential units shall make any special reports to the
15 commissioner that the commissioner may, from time to time,
16 require.

17 10166.14. A real estate broker shall notify the department when
18 he or she is no longer subject to this part. If a broker has already
19 made reports required by Sections 10166.07 and 10166.08 within
20 the year, he or she shall continue reports for that year, but shall
21 notify the department prior to the expiration of that year that he
22 or she will no longer be subject to this part in the succeeding year.

23 10166.15. (a) The commissioner shall regularly report
24 violations of this article, as well as enforcement actions taken
25 against any mortgage loan originator to whom an endorsement has
26 been issued, and enforcement actions taken against any individual
27 for failure to obtain an endorsement as a mortgage loan originator,
28 to the Nationwide Mortgage Licensing System and Registry.

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

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

37 10166.16. (a) Except as otherwise provided in Section 1512
38 of the SAFE Act, the requirements under any federal or state law
39 regarding the privacy or confidentiality of any information or
40 material provided to the Nationwide Mortgage Licensing System

1 and Registry, and any privilege arising under federal or state law,
2 including the rules of any federal or state court, with respect to
3 that information or material, shall continue to apply to the
4 information or material after the information or material has been
5 disclosed to the Nationwide Mortgage Licensing System and
6 Registry. The information and material may be shared with all
7 state and federal regulatory officials with mortgage industry
8 oversight authority without the loss of privilege or the loss of
9 confidentiality protections provided by federal or state law.

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

16 (c) Information or material that is subject to a privilege or
17 confidentiality under subdivision (a) shall not be subject to either
18 of the following:

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

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

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

33 10166.17. In addition to any other duties imposed upon the
34 commissioner by law, the commissioner shall require mortgage
35 loan originators to be licensed and registered through the
36 Nationwide Mortgage Licensing System and Registry. In order to
37 carry out this requirement the commissioner is authorized to
38 participate in the Nationwide Mortgage Licensing System and
39 Registry. For this purpose, the commissioner may establish by

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

3 (a) Background checks for the following:

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

5 (2) Civil or administrative records.

6 (3) Credit history.

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

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

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

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

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

19 10235.5. (a) No real estate licensee or mortgage loan originator
20 shall place an advertisement disseminated primarily in this state
21 for a loan unless there is disclosed within the printed text of that
22 advertisement, or the oral text in the case of a radio or television
23 advertisement, the Department of Real Estate license number and
24 the unique identifier assigned to that licensee by the Nationwide
25 Mortgage Licensing System and Registry under which the loan
26 would be made or arranged.

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

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

32 10236.4. (a) In compliance with Section 10235.5, every
33 licensed real estate broker shall also display his or her license
34 number on all advertisements where there is a solicitation for
35 borrowers or potential investors. Every mortgage loan originator,
36 as defined in Section 10166.01, shall also display the unique
37 identifier assigned to that individual by the Nationwide Mortgage
38 Licensing System and Registry on all advertisements where there
39 is a solicitation for borrowers.

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

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

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

9 22012. (a) "Branch office license" means a license to engage
10 in business as a finance lender or broker at a location other than
11 the location identified in a finance lender or broker license
12 application or amended application.

13 (b) "Depository institution" has the same meaning as in Section
14 3 of the Federal Deposit Insurance Act, and includes any credit
15 union.

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

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

26 (e) "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, as defined in Section 103(v) of the federal Truth in
30 Lending Act, or residential real estate upon which is constructed
31 or intended to be constructed a dwelling. "Dwelling" means a
32 residential structure that contains one to four units, whether or not
33 that structure is attached to real property. The term includes an
34 individual condominium unit, cooperative unit, mobilehome, or
35 trailer, if it is used as a residence.

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

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

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

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

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

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

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

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

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

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

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

(1) Meets the definition of mortgage loan originator.

(2) Is an employee of a depository institution, a subsidiary that is owned and controlled by a depository institution and regulated

1 by a federal banking agency, or an institution regulated by the
2 Farm Credit Administration.

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

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

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

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

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

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

33 SEC. 12. Section 22100 of the Financial Code is amended to
34 read:

35 22100. (a) No person shall engage in the business of a finance
36 lender or broker without obtaining a license from the commissioner.

37 (b) Every licensee engaging in the business of making or
38 brokering residential mortgage loans shall require that every
39 mortgage loan originator employed or compensated by that licensee
40 obtains and maintains a mortgage loan originator license from the

1 commissioner under this division or Division 20 (commencing
2 with Section 50000), or has first obtained a license endorsement
3 from the Commissioner of Real Estate pursuant to Article 2.1
4 (commencing with Section 10166.01) of Chapter 2 3 of Part 1 of
5 Division 4 of the Business and Professions Code.

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

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

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

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

18 22101. (a) An application for a license as a finance lender or
19 broker under this division shall be in the form and contain the
20 information that the commissioner may by rule require and shall
21 be filed upon payment of the fee specified in Section 22103.

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

30 (c) Nothing in this section shall be construed to prevent a
31 licensee from engaging in the business of a finance lender through
32 a subsidiary corporation if the subsidiary corporation is licensed
33 pursuant to this division.

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

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

(f) Notwithstanding subdivisions (a) to (e), inclusive, the commissioner may by rule require an application to be made through the Nationwide Mortgage Licensing System and Registry, and may require fees, fingerprints, financial statements, supporting documents, changes of address, and any other information, and amendments or modifications thereto, to be submitted in the same manner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 SEC. 17. Section 22104 of the Financial Code is amended to
2 read:

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

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

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

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

19 22105.1. (a) An applicant for a mortgage loan originator
20 license shall apply by submitting the uniform form prescribed for
21 such purpose by the Nationwide Mortgage Licensing System and
22 Registry. The commissioner may require the submission of
23 additional information or supporting documentation to the
24 department.

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

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

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

37 (2) Personal history and experience in a form prescribed by the
38 Nationwide Mortgage Licensing System and Registry, including
39 the submission of authorization for the Nationwide Mortgage

1 Licensing System and Registry and the commissioner to obtain
2 both of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of its effective date. During any period when its certificate is
2 revoked or suspended, a finance lender or broker licensee and any
3 mortgage loan originator licensee employed by the finance lender
4 or broker shall not conduct business pursuant to this division except
5 as may be permitted by order of the commissioner. However, the
6 revocation, suspension, or surrender of a certificate shall not affect
7 the powers of the commissioner as provided in this division.

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

12 (f) Notwithstanding subdivisions (a) to (e), inclusive, the
13 commissioner may by rule require licensees to pay assessments
14 through the Nationwide Mortgage Licensing System and Registry.

15 SEC. 23.5. Section 22108 of the Financial Code is amended
16 to read:

17 22108. (a) The commissioner may by rule require licensees
18 to file, at the times that he or she may specify, the information that
19 he or she may reasonably require regarding any changes in the
20 information provided in any application filed pursuant to this
21 division.

22 (b) The commissioner may by rule require a licensee to file
23 information through the Nationwide Mortgage Licensing System
24 and Registry.

25 SEC. 24. Section 22109 of the Financial Code is amended to
26 read:

27 22109. (a) Upon reasonable notice and opportunity to be heard,
28 the commissioner may deny the application for a finance lender
29 or broker license for any of the following reasons:

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

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

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

8 (4) The applicant employs a mortgage loan originator who is
9 not licensed, or has not initiated an application to become licensed,
10 pursuant to this division.

11 (b) The application shall be considered withdrawn within the
12 meaning of this section if the applicant fails to respond to a written
13 notification of a deficiency in the application within 90 days of
14 the date of the notification.

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

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

22 22109.1. The commissioner shall not issue a mortgage loan
23 originator license unless the commissioner makes, at a minimum,
24 the following findings:

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

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

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

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

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

39 (c) The applicant has demonstrated such financial responsibility,
40 character, and general fitness as to command the confidence of

1 the community and to warrant a determination that the mortgage
2 loan originator will operate honestly, fairly, and efficiently within
3 the purposes of this division.

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

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

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

11 SEC. 26. Section 22109.2 is added to the Financial Code, to
12 read:

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

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

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

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

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

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

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

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

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

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

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

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

16 (1) Ethics.

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

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

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

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

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

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

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

38 (g) A licensed mortgage loan originator who fails to maintain
39 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 SEC. 28. Section 22109.4 is added to the Financial Code, to
4 read:

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

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

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

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

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

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

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

26 22109.5. (a) A licensed mortgage loan originator shall
27 complete at least eight hours of continuing education approved in
28 accordance with subdivision (b). The continuing education shall
29 include at least the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 22109.6. In addition to any other duties imposed upon the
38 commissioner by law, the commissioner shall require mortgage
39 loan originators to be licensed and registered through the
40 Nationwide Mortgage Licensing System and Registry. In order to

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

6 (a) Background information for the following:

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

8 (2) Civil or administrative records.

9 (3) Credit history.

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

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

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

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

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

22 22112. (a) A licensee shall maintain a surety bond in
23 accordance with this subdivision in a minimum amount of
24 twenty-five thousand dollars (\$25,000). The bond shall be payable
25 to the commissioner and issued by an insurer authorized to do
26 business in this state. An original surety bond, including any and
27 all riders and endorsements executed subsequent to the effective
28 date of the bond, shall be filed with the commissioner within 10
29 days of execution. For licensees with multiple licensed locations,
30 only one surety bond is required. The bond shall be used for the
31 recovery of expenses, fines, and fees levied by the commissioner
32 in accordance with this division or for losses or damages incurred
33 by borrowers or consumers as the result of a licensee's
34 noncompliance with the requirements of this division.

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

1 that a new bond is required, constitutes sufficient grounds for the
2 suspension or revocation of the license.

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

9 SEC. 31. Section 22151 of the Financial Code is amended to
10 read:

11 22151. (a) A finance lender license, broker license, and the
12 license of every mortgage loan originator employed by a lender
13 or finance broker, along with any currently effective order of the
14 commissioner approving a different name pursuant to Section
15 22155, shall be conspicuously posted in the place of business
16 authorized by the license.

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

23 SEC. 32. Section 22152 of the Financial Code is amended to
24 read:

25 22152. A finance lender or broker licensee shall maintain only
26 one place of business under a duplicate or original license issued
27 pursuant to Section 22101 or 22102. The commissioner may issue
28 more than one license to the same licensee upon compliance with
29 all the provisions of this division governing an original issuance
30 of a license.

31 SEC. 33. Section 22153 of the Financial Code is amended to
32 read:

33 22153. (a) If a finance lender or broker licensee seeks to
34 change its place of business to a street address other than that
35 designated in its license, the licensee shall provide notice to the
36 commissioner at least 10 days prior to the change. The
37 commissioner shall notify the licensee within 10 days if the
38 commissioner disapproves the change, and if the commissioner
39 does not notify the licensee of disapproval within 10 days, the
40 change in address shall be deemed approved. The commissioner

1 may require an applicant to submit its application to change its
2 place of business through the Nationwide Mortgage Licensing
3 System and Registry.

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

10 SEC. 34. Section 22154 of the Financial Code is amended to
11 read:

12 22154. (a) No licensee shall conduct the business of making
13 loans under this division within any office, room, or place of
14 business in which any other business is solicited or engaged in, or
15 in association or conjunction therewith, except as is authorized in
16 writing by the commissioner upon the commissioner's finding that
17 the character of the other business is such that the granting of the
18 authority would not facilitate evasions of this division or of the
19 rules and regulations made pursuant to this division. An
20 authorization once granted remains in effect until revoked by the
21 commissioner. The commissioner may authorize the other business
22 through the Nationwide Mortgage Licensing System and Registry.

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

34 (c) The following definitions govern the construction of this
35 section:

36 (1) "Affiliated" or "affiliate" means the following: A corporation
37 is an affiliate of, or a corporation is affiliated with, another
38 specified corporation if it directly, or indirectly through one or
39 more intermediaries, controls, is controlled by, or is under common
40 control with, the other specified corporation.

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

7 SEC. 35. Section 22155 of the Financial Code is amended to
8 read:

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

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

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

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

37 22156. Finance lender, broker, and mortgage loan originator
38 licensees shall keep and use in their business, books, accounts,
39 and records which will enable the commissioner to determine if
40 the licensee is complying with the provisions of this division and

1 with the rules and regulations made by the commissioner. On any
2 loan secured by real property in which loan proceeds were
3 disbursed to an independent escrowholder, the licensee shall retain
4 records and documents as set forth by rules of the commissioner
5 adopted pursuant to Section 22150. Upon request of the
6 commissioner, licensees shall file an authorization for disclosure
7 to the commissioner of financial records of the licensed business
8 pursuant to Section 7473 of the Government Code.

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

11 22157. Finance lender, broker, and mortgage loan originator
12 licensees shall preserve their books, accounts, and records,
13 including cards used in the card system, if any, for at least three
14 years after making the final entry on any loan recorded therein.

15 SEC. 38. Section 22159 of the Financial Code is amended to
16 read:

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

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

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

38 (d) The commissioner may by rule or order require a mortgage
39 loan originator to submit reports of condition to the Nationwide
40 Mortgage Licensing System and Registry, in lieu of the reports of

1 condition required of his or her employer pursuant to subdivision
2 (c).

3 SEC. 39. Section 22168 of the Financial Code is amended to
4 read:

5 22168. (a) The commissioner may, after appropriate notice
6 and opportunity for hearing, suspend for a period not to exceed 12
7 months or bar a person from any position of employment with a
8 licensee if the commissioner finds that the person has willfully
9 used or claimed without authority a designation or certification of
10 special education, practice, or skill that the person has not attained,
11 or willfully held out to the public a confusingly similar designation
12 or certification for the purpose of misleading the public regarding
13 his or her qualifications or experience.

14 (b) Within 15 days from the date of a notice of intention to issue
15 an order pursuant to subdivision (a), the person may request a
16 hearing under the Administrative Procedure Act (Chapter 5
17 (commencing with Section 11500) of Part 1 of Division 3 of Title
18 2 of the Government Code). Upon receiving a request, the matter
19 shall be set for hearing to commence within 30 days after receipt
20 unless the person subject to this division consents to a later date.
21 If no hearing is requested within 15 days after the mailing or
22 service of the notice and none is ordered by the commissioner, the
23 failure to request a hearing shall constitute a waiver of the right to
24 a hearing.

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

29 (d) Persons suspended or barred under this section are prohibited
30 from participating in any business activity of a licensed finance
31 lender, broker, or mortgage loan originator, and from engaging in
32 any business activity on the premises where a licensed finance
33 lender, broker, or mortgage loan originator is conducting its
34 business. This subdivision shall not be construed to prohibit
35 suspended or barred persons from having their personal transactions
36 processed by a licensed finance lender, broker, or mortgage loan
37 originator.

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

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

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

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

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

(c) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any 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.

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

3 22170. (a) It is unlawful for any person to knowingly alter,
4 destroy, mutilate, conceal, cover up, falsify, or make a false entry
5 in any record, document, or tangible object with the intent to
6 impede, obstruct, or influence the administration or enforcement
7 of any provision of this division.

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

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

16 22171. (a) The commissioner shall apply the guidance on
17 nontraditional mortgage product risks published on November 14,
18 2006, by the Conference of State Bank Supervisors and the
19 American Association of Residential Mortgage Regulators, and
20 the Statement on Subprime Mortgage Lending published on July
21 17, 2007, by the aforementioned entities and the National
22 Association of Consumer Credit Administrators, to licensees.

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

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

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

34 22172. (a) The commissioner may do one or more of the
35 following:

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

39 (2) Deny, suspend, revoke, condition, or decline to renew a
40 mortgage loan originator license if an applicant or licensee fails

1 at any time to meet the requirements of Section 22109.1 or 22109.4,
2 or withholds information or makes a material misstatement in an
3 application for a license or license renewal.

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

7 (4) Impose fines on a mortgage loan originator or any finance
8 lender or broker licensee employing a mortgage loan originator
9 pursuant to subdivisions (b), (c), and (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 finance
13 lender or broker licensee employing a mortgage loan originator to
14 desist and refrain from conducting business, including immediate
15 temporary orders to desist and refrain.

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

20 (C) Enter immediate temporary orders to cease business under
21 a license issued pursuant to the authority granted under Section
22 22100 if the commissioner determines that the license was
23 erroneously granted or the mortgage loan originator is currently
24 in violation of this division.

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

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

36 (c) The maximum amount of penalty for each act or omission
37 described in subdivision (b) shall be twenty-five thousand dollars
38 (\$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. 42. Section 22347 is added to the Financial Code, to read:

5 22347. The unique identifier of any licensed mortgage loan
6 originator shall be clearly shown on all residential mortgage loan
7 application forms, solicitations, or advertisements, including
8 business cards or Internet Web sites, and any other documents as
9 established by rule, regulation, or order of the commissioner.

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

12 22700. (a) Finance lender and broker licenses issued under
13 this division shall remain in effect until they are surrendered,
14 revoked, or suspended.

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

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

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

29 22755. It is a violation of this division for a mortgage loan
30 originator to do any of the following:

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

34 (b) Engage in any unfair or deceptive practice toward any
35 person.

36 (c) Obtain property by fraud or misrepresentation.

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

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

4 (f) Conduct any business covered by this division without
5 holding a valid license as required under this division, or assist or
6 aide and abet any person in the conduct of business under this
7 division without a valid license as required under this division.

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

11 (h) Fail to comply with this division or rules or regulations
12 promulgated under this division, or fail to comply with any other
13 state or federal law, including the rules and regulations thereunder,
14 applicable to any business authorized or conducted under this
15 division.

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

20 (j) Negligently make any false statement or knowingly and
21 willfully make any omission of material fact in connection with
22 any information or reports filed with a governmental agency or
23 the Nationwide Mortgage Licensing System and Registry or in
24 connection with any investigation conducted by the commissioner
25 or another governmental agency.

26 (k) Make any payment, threat, or promise, directly or indirectly,
27 to any person for the purposes of influencing the independent
28 judgment of the person in connection with a residential mortgage
29 loan, or make any payment, threat, or promise, directly or
30 indirectly, to any appraiser of a property, for the purposes of
31 influencing the independent judgment of the appraiser with respect
32 to the value of the property.

33 (l) Collect, charge, attempt to collect or charge, or use or propose
34 any agreement purporting to collect or charge any fee prohibited
35 by this division.

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

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

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

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

12 (b) An employee of a licensee or of a person exempt from
13 licensure is not required to be licensed when acting within the
14 scope of his or her employment and shall be exempt from any
15 other law from which his or her employer is exempt, except that
16 an individual who meets the definition of a mortgage loan
17 originator in ~~subdivision (u) of Section 50003~~ *Section 50003.5*
18 shall be subject to this division.

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

20 (1) Any bank, trust company, insurance company, or industrial
21 loan company doing business under the authority of, or in
22 accordance with, a license, certificate, or charter issued by the
23 United States or any state, district, territory, or commonwealth of
24 the United States that is authorized to transact business in this
25 state.

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

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

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

34 (5) A wholly owned service corporation of a savings and loan
35 association or savings bank organized under the laws of this state
36 or the wholly owned service corporation of a federally chartered
37 savings and loan association or savings bank that is authorized to
38 transact business in this state.

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

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

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

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

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

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

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

(13) A registered mortgage loan originator described in subdivision (e).

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

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

(f) A loan processor or underwriter who is an independent contractor employed engaged by a residential mortgage lender or servicer may not perform the activities of a loan processor or

1 underwriter under this division unless the independent contractor
2 loan processor or underwriter obtains and maintains a license under
3 Section 50120.

4 SEC. 46. Section 50002.5 is added to the Financial Code, to
5 read:

6 50002.5. (a) Every licensee engaging in the business of
7 making, servicing, or making and servicing residential mortgage
8 loans shall require that every mortgage loan originator employed
9 or compensated by that licensee obtains and maintains a mortgage
10 loan originator license from the commissioner under this division
11 or Division 9 (commencing with Section 22000), or has first
12 obtained a license endorsement from the commissioner of Real
13 Estate pursuant to Article 2.1 (commencing with Section 10166.01)
14 of Chapter ~~2~~ 3 of Part 1 of Division 4 of the Business and
15 Professions Code.

16 (b) A residential mortgage lender or servicer shall not employ
17 a mortgage loan originator whose license or license endorsement
18 has lapsed.

19 (c) A residential mortgage lender or servicer may not make or
20 broker a residential mortgage loan unless that loan is negotiated
21 by or applied for through a licensed mortgage loan originator.

22 (d) Every licensee engaged in the business of making, servicing,
23 or making and servicing residential mortgage loans and every
24 mortgage loan originator licensed under this division shall register
25 with and maintain a valid unique identifier issued by the
26 Nationwide Mortgage Licensing System and Registry.

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

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

34 50003. (a) “Annual audit” means a certified audit of the
35 licensee’s books, records, and systems of internal control performed
36 by an independent certified public accountant in accordance with
37 generally accepted accounting principles and generally accepted
38 auditing standards.

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

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

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

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

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

18 (g) “Engage in the business” means the dissemination to the
19 public, or any part of the public, by means of written, printed, or
20 electronic communication or any communication by means of
21 recorded telephone messages or spoken on radio, television, or
22 similar communications media, of any information relating to the
23 making of residential mortgage loans, the servicing of residential
24 mortgage loans, or both. “Engage in the business” also means,
25 without limitation, making residential mortgage loans or servicing
26 residential mortgage loans, or both.

27 (h) “Federal banking agencies” means the Board of Governors
28 of the Federal Reserve System, the Comptroller of the Currency,
29 the Director of the Office of Thrift Supervision, the National Credit
30 Union Administration, and the Federal Deposit Insurance
31 Corporation.

32 (i) “In this state” includes any activity of a person relating to
33 making or servicing a residential mortgage loan that originates
34 from this state and is directed to persons outside this state, or that
35 originates from outside this state and is directed to persons inside
36 this state, or that originates inside this state and is directed to
37 persons inside this state, or that leads to the formation of a contract
38 and the offer or acceptance thereof is directed to a person in this
39 state (whether from inside or outside this state and whether the
40 offer was made inside or outside the state).

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

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

10 (2) Any bank, trust company, savings bank or savings and loan
11 association, credit union, industrial bank or industrial loan
12 company, personal property broker, consumer finance lender,
13 commercial finance lender, or insurance company, or subsidiary
14 or affiliate of one of the preceding entities, doing business under
15 the authority of or in accordance with a license, certificate, or
16 charter issued by the United States or any state, district, territory,
17 or commonwealth of the United States.

18 (3) Trustees of pension, profit-sharing, or welfare funds, if the
19 pension, profit-sharing, or welfare fund has a net worth of not less
20 than fifteen million dollars (\$15,000,000), except pension,
21 profit-sharing, or welfare funds of a licensee or its affiliate,
22 self-employed individual retirement plans, or individual retirement
23 accounts.

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

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

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

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

38 (6) A residential mortgage lender or servicer licensed to make
39 residential mortgage loans under this law or an affiliate or
40 subsidiary of that person.

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

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

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

(10) A syndication or other combination of any of the foregoing 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, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

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

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

(l) "Law" means the California Residential Mortgage Lending Act.

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

(n) "Licensee" means, depending on the context, a person licensed under Chapter 2 (commencing with Section 50120),

1 Chapter 3 (commencing with Section 50130), or Chapter 3.5
2 (commencing with Section 50140).

3 (o) “Makes or making residential mortgage loans” or “mortgage
4 lending” means processing, underwriting, or as a lender using or
5 advancing one’s own funds, or making a commitment to advance
6 one’s own funds, to a loan applicant for a residential mortgage
7 loan.

8 (p) “Mortgage loan,” “residential mortgage loan,” or “home
9 mortgage loan” means a federally related mortgage loan as defined
10 in Section 3500.2 of Title 24 of the Code of Federal Regulations,
11 or a loan made to finance construction of a one-to-four family
12 dwelling.

13 (q) “Mortgage servicer” or “residential mortgage loan servicer”
14 means a person that (1) is an approved servicer for the Federal
15 Housing Administration, Veterans Administration, Farmers Home
16 Administration, Government National Mortgage Association,
17 Federal National Mortgage Association, or Federal Home Loan
18 Mortgage Corporation, and (2) directly services or offers to service
19 mortgage loans.

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

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

26 (t) “Own funds” means (1) cash, corporate capital, or warehouse
27 credit lines at commercial banks, savings banks, savings and loan
28 associations, industrial loan companies, or other sources that are
29 liability items on a lender’s financial statements, whether secured
30 or unsecured, or (2) a lender’s affiliate’s cash, corporate capital,
31 or warehouse credit lines at commercial banks or other sources
32 that are liability items on the affiliate’s financial statements,
33 whether secured or unsecured. “Own funds” does not include funds
34 provided by a third party to fund a loan on condition that the third
35 party will subsequently purchase or accept an assignment of that
36 loan.

37 (u) “Person” means a natural person, a sole proprietorship, a
38 corporation, a partnership, a limited liability company, an
39 association, a trust, a joint venture, an unincorporated organization,

1 a joint stock company, a government or a political subdivision of
2 a government, and any other entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Meets the definition of mortgage loan originator.

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

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

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

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

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

(b) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing

1 information including the use of business cards, stationery,
2 brochures, signs, rate lists, or other promotional items, that the
3 individual can or will perform any of the activities of a mortgage
4 loan originator.

5 (c) An independent contractor may not engage in the activities
6 of a loan processor or underwriter for a residential mortgage loan
7 unless the independent contractor loan processor or underwriter
8 obtains and maintains a residential mortgage lender or residential
9 mortgage servicer license and a mortgage loan originator license
10 under this division.

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

13 50120. (a) A residential mortgage lender shall file an
14 application for licensure under this chapter with the commissioner
15 to make or service residential mortgage loans in this state.

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

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

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

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

1 (f) The commissioner may, by rule, require an applicant for a
2 residential mortgage lender or servicer license or a residential
3 mortgage lender or servicer licensee to make some or all filings
4 with the commissioner through the Nationwide Mortgage Licensing
5 System and Registry.

6 (g) The commissioner may, by rule, require licensees to pay
7 assessments through the Nationwide Mortgage Licensing System
8 and Registry.

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

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

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

18 (b) The payment of a nonrefundable investigation fee of one
19 hundred dollars (\$100), plus the cost of fingerprint processing and
20 clearance, and an application filing fee of nine hundred dollars
21 (\$900).

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

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

34 50122. (a) Except as provided in Section 50120, the
35 information provided on an application for a residential mortgage
36 lender, residential mortgage servicer, or residential mortgage lender
37 and servicer license shall be sworn testimony on a form prescribed
38 by the commissioner. If an applicant proposes to engage in business
39 as a residential mortgage loan servicer as well as a residential
40 mortgage lender, this information shall be set forth in the

1 application. The commissioner may issue a license under this
2 chapter to engage in business as a residential mortgage lender or
3 to engage in business as a residential mortgage lender and
4 residential mortgage loan servicer. A person filing an application
5 under this chapter to engage in business as a residential mortgage
6 lender and a residential mortgage loan servicer is not required to
7 file an application under Chapter 3 (commencing with Section
8 50130).

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

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

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

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

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

29 (B) Any person that controls, directly or indirectly, the election
30 of 25 percent or more of the members of the board of directors of
31 an applicant.

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

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

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

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

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

2 SEC. 53. Section 50123 of the Financial Code is amended to
3 read:

4 50123. (a) A residential mortgage lender license shall remain
5 in effect until suspended, surrendered, or revoked.

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

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

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

30 50124. (a) A residential mortgage lender or servicer shall do
31 all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (15) Remain solvent.

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

6 (17) Comply with any other requirement established by rule of
7 the commissioner.

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

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

12 50125. The commissioner may refuse to issue a residential
13 mortgage lender or servicer license if any of the following apply:

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

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

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

20 SEC. 56. Section 50126 of the Financial Code is amended to
21 read:

22 50126. (a) Upon reasonable notice and opportunity to be heard,
23 the commissioner may deny an application for any of the following
24 reasons:

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

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

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

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

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

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

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

18 ~~50127. The proceedings for a denial of a license shall be~~
19 ~~conducted in accordance with Chapter 5 (commencing with Section~~
20 ~~11500) of Part 1 of Division 3 of Title 2 of the Government Code;~~
21 ~~and the commissioner has all the powers granted therein.~~

22 ~~SEC. 58.~~

23 ~~SEC. 57. Section 50128 of the Financial Code is amended to~~
24 ~~read:~~

25 50128. As used in this act, the term “principal officer” means
26 an officer with direct responsibility for the conduct of the
27 residential mortgage lender or servicer licensee’s or license
28 applicant’s lending or servicing activities in this state.

29 ~~SEC. 59.~~

30 ~~SEC. 58. Section 50129 of the Financial Code is amended to~~
31 ~~read:~~

32 50129. (a) A residential mortgage lender or servicer licensed
33 under this chapter may, under the authority of that license and
34 subject to the provisions of this division, do both of the following:

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

38 (2) Engage, pursuant to a written agency contract with an
39 institutional lender specified in paragraph (1), (2), or (4) of
40 subdivision (k) of Section 50003, in the business of soliciting,

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

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

24 ~~SEC. 60.~~

25 *SEC. 59.* Section 50130 of the Financial Code is amended to
26 read:

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

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

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

37 (2) Paying the investigation and application fees required by
38 Section 50121.

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

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

3 (c) A licensee may not make or service loans secured by real
4 property pursuant to the authority of a license, or exemption from
5 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 servicer license, if the commissioner finds that the
10 conduct of that business has facilitated evasions of this division
11 or the rules adopted pursuant to this division, or that the conduct
12 of that business is in violation of any law to which that business
13 is subject.

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

24 (f) The commissioner shall license a mortgage servicer upon
25 completion of the investigation and issuance of the findings
26 required by Section 50121, subject to Sections 50123, 50125,
27 50126, and 50127.

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

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

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

38 ~~SEC. 61.~~

39 *SEC. 60.* Chapter 3.5 (commencing with Section 50140) is
40 added to Division 20 of the Financial Code, to read:

CHAPTER 3.5. MORTGAGE LOAN ORIGINATORS

50140. (a) 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) 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) 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 (g) and (h).

(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.

(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.

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

(c) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of

1 the community and to warrant a determination that the mortgage
2 loan originator will operate honestly, fairly, and efficiently within
3 the purposes of this division.

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

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

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

11 (g) The surety bond of the residential mortgage lender or servicer
12 employing the applicant covers the activities of the applicant and
13 meets the requirements of Section 50205.

14 50142. (a) An applicant for a mortgage loan originator license
15 shall complete at least 20 hours of education approved in
16 accordance with subdivision (b). The education shall include at
17 least the following:

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

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

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

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

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

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

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

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

5 50143. (a) An applicant for a mortgage loan originator license
6 shall pass a qualified written test developed by the Nationwide
7 Mortgage Licensing System and Registry and administered by a
8 test provider approved by the Nationwide Mortgage Licensing
9 System and Registry.

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

14 (1) Ethics.

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

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

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

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

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

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

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

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

1 50144. (a) A mortgage loan originator shall comply with the
2 requirements of this section on or before December 31 of every
3 year.

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

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

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

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

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

19 50145. (a) A licensed mortgage loan originator shall complete
20 at least eight hours of continuing education approved in accordance
21 with subdivision (b). The continuing education shall include at
22 least the following:

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

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

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

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

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

14 *SEC. 61.* Chapter 3.6 (commencing with Section 50150) is
15 added to Division 20 of the Financial Code, to read:

16
17 CHAPTER 3.6. NATIONWIDE MORTGAGE LICENSING SYSTEM
18 AND REGISTRY
19

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

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

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

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

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

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

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

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

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

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

50152. The commissioner shall report regularly violations of this division, as well as enforcement actions and other relevant

1 information, to the Nationwide Mortgage Licensing System and
2 Registry, to the extent that information is public record.

3 ~~SEC. 63.~~

4 *SEC. 62.* Section 50200 of the Financial Code is amended to
5 read:

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

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

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

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

39 (e) If a licensee required to make an audit fails to cause an audit
40 to be made, the commissioner may cause the audit to be made by

an independent certified public accountant at the licensee's expense. The commissioner shall select the independent certified public accountant by advertising for bids or by other fair and impartial means that the commissioner establishes by rule. The commissioner may summarily revoke the license of a licensee who fails to file a certified financial statement prepared by an independent certified public accountant as required by this division or at the request of the commissioner.

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

~~SEC. 64.~~

SEC. 63. Section 50201 of the Financial Code is amended to read:

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

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

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

~~SEC. 65.~~

SEC. 64. Section 50202 of the Financial Code is amended to read:

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

(b) Except as provided in subdivision (f), a trust account shall be placed in a non-interest-bearing account in a federally insured depository institution, a federal home loan bank, a federal reserve

1 bank, or other similar government-sponsored enterprise, to be
2 removed and used only for the following:

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

5 (2) Refunds to the borrower.

6 (3) Transfer to another institution that is described in this
7 subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

11 ~~SEC. 65.5.~~

12 *SEC. 65.* Section 50204 of the Financial Code is amended to
13 read:

14 50204. A licensee may not do any of the following:

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

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

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

27 (d) Commit an act in violation of Section 2941 of the Civil
28 Code.

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

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

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

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

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

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

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

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

11 (m) Commit an act in violation of Section 1695.13 of the Civil
12 Code.

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

15 (o) Commit an act in violation of Section 2948.5 of the Civil
16 Code. Evidence of compliance with Section 2948.5 of the Civil
17 Code may be evidenced by (1) a certification executed by the
18 licensee, at no cost to the borrower, pursuant to Section 2015.5 of
19 the Code of Civil Procedure, or (2) other evidence in the loan file
20 acceptable to the commissioner.

21 (p) Make or broker a loan that is offered by, negotiated by, or
22 applied for through a mortgage loan originator who is not licensed
23 in this state through the Nationwide Mortgage Licensing System
24 and Registry, unless the mortgage loan originator is exempt from
25 licensure.

26 SEC. 66. Section 50205 of the Financial Code is amended to
27 read:

28 50205. (a) A residential mortgage lender or servicer licensee
29 shall maintain a surety bond in accordance with this subdivision.
30 The bond shall be used for the recovery of expenses, fines, and
31 fees levied by the commissioner in accordance with this division
32 or for losses or damages incurred by borrowers or consumers as
33 the result of a licensee's noncompliance with the requirements of
34 this division. The bond shall be payable when the licensee fails to
35 comply with a provision of this division and shall be in the amount
36 of fifty thousand dollars (\$50,000), and may be increased by order
37 of the commissioner to one hundred thousand dollars (\$100,000)
38 upon a determination by the commissioner that the licensee is not
39 in compliance with any provision of this chapter or any rule or
40 order adopted or issued by the commissioner to implement or

1 enforce provisions of this chapter. The bond shall be payable to
2 the commissioner and issued by an insurance company authorized
3 to do business in this state. An original surety bond, including any
4 and all riders and endorsements executed subsequent to the
5 effective date of the bond, shall be filed with the commissioner
6 within 10 days of its execution.

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

14 (c) The commissioner ~~shall~~ *may* by rule require a higher bond
15 amount for a licensee employing one or more mortgage loan
16 originators, based on the dollar amount of residential mortgage
17 loans originated by that licensee and any mortgage loan originators
18 employed by that licensee. Every mortgage loan originator
19 employed by the licensee shall be covered by the surety bond.

20 SEC. 67. Section 50206 of the Financial Code is amended to
21 read:

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

29 (b) The commissioner shall approve or disapprove the proposed
30 change of control of a licensee in accordance with the provisions
31 of Section 50126.

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

35 SEC. 68. Section 50208 of the Financial Code is amended to
36 read:

37 50208. The license shall state the name of the licensee. If the
38 licensee is a partnership, the license shall state the names of its
39 general partners. If the licensee is a corporation or an association,
40 the license shall state the date and place of the corporation's

1 incorporation or organization. If the licensee is a residential
2 mortgage lender or servicer, the license shall state the address of
3 the licensee's principal business location. The license shall state
4 whether the licensee is licensed as a residential mortgage loan
5 lender or servicer or as a mortgage loan originator.

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

7 50209. The unique identifier of any licensed mortgage loan
8 originator shall be clearly shown on all residential mortgage loan
9 application forms, solicitations, or advertisements, including
10 business cards or Internet Web sites, and any other documents as
11 established by rule, regulation, or order of the commissioner.

12 SEC. 70. Section 50302 of the Financial Code is amended to
13 read:

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

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

36 (c) Affiliates of a licensee are subject to examination by the
37 commissioner on the same terms as the licensee, but only when
38 reports from, or examination of, a licensee provides documented
39 evidence of unlawful activity between a licensee and affiliate

1 benefiting, affecting, or arising from the activities regulated by
2 this division.

3 (d) The residential mortgage lender or servicer licensee shall
4 pay, and the commissioner shall assess, the reasonable expenses
5 of any examination of the licensee and affiliates, consistent with
6 the requirements of subdivision (c) of Section 50314.

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

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

17 50307. (a) Each residential mortgage lender or servicer licensee
18 shall file a report with the commissioner annually, on or before
19 the first day of March, giving the relevant information that the
20 commissioner reasonably requires to make the calculation required
21 by subdivision (a) of Section 50401. The report shall be made
22 under oath and in the form prescribed by the commissioner.

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

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

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

33 50307.2. The commissioner may require a licensee that employs
34 one or more mortgage loan originators to submit to the Nationwide
35 Mortgage Licensing System and Registry reports of condition,
36 which shall be in such form and shall contain such information as
37 the Nationwide Mortgage Licensing System and Registry may
38 require.

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

1 50310. Nothing in this law shall preclude a person, other than
2 a mortgage loan originator, whose license has been suspended or
3 revoked, summarily or otherwise, from continuing to service
4 residential mortgage loans pursuant to servicing contracts in
5 existence at the time of the suspension for a reasonable transition
6 period, as determined by the commissioner, after the date of the
7 entry of the final decision in the case suspending or revoking the
8 license.

9 SEC. 73. Section 50317 of the Financial Code is amended to
10 read:

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

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

28 (1) Offenses specified in Chapter 18 (commencing with Section
29 3350) of Division 1.

30 (2) Offenses specified in Article 4 (commencing with Section
31 5300) of Chapter 1 of Division 2.

32 (3) Offenses specified in Article 8 (commencing with Section
33 14750) of Chapter 4 of Division 5.

34 (4) Offenses specified in Chapter 7 (commencing with Section
35 17700) of Division 6.

36 (5) Offenses specified in Chapter 6 (commencing with Section
37 18435) of Division 7.

38 (6) Offenses specified in provisions of the laws of the United
39 States added or amended by the federal Financial Institutions

1 Reform, Recovery and Enforcement Act of 1989 (Public Law
2 101-73).

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

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

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

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

36 (f) Nothing in this section shall be construed to permit the
37 reinstatement of any person barred by the commissioner pursuant
38 to Section 50320 nor to prohibit the commissioner from bringing
39 any action pursuant to Section 50320.

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

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

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

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

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

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

(b) Within 15 days from the date of a notice of intention to issue an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code). Upon receiving a request, the matter

1 shall be set for hearing to commence within 30 days after receipt
2 unless the person subject to this division consents to a later date.
3 If no hearing is requested within 15 days after the mailing or
4 service of the notice and none is ordered by the commissioner, the
5 failure to request a hearing shall constitute a waiver of the right to
6 a hearing.

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

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

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

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

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

34 SEC. 75. Section 50320 of the Financial Code is amended to
35 read:

36 50320. Whenever, in the opinion of the commissioner, a person
37 is engaged, either actually or through subterfuge, in the business
38 of making residential mortgage loans, servicing residential
39 mortgage loans, or engaging in business as a mortgage loan
40 originator, without a license from the commissioner, the

1 commissioner may order that person to desist and refrain. If, within
2 30 days after an order is served, a request for a hearing is filed in
3 writing and the hearing is not held within 60 days of the filing, the
4 order is rescinded. This section does not apply to persons exempted
5 under subdivision (b) of Section 50002.

6 SEC. 76. Section 50325 of the Financial Code is amended to
7 read:

8 50325. The commissioner may immediately revoke the
9 residential mortgage lender's, residential mortgage loan servicer's,
10 or mortgage loan originator's license if the licensee fails to comply
11 with any order issued under Section 50318, 50319, 50321, 50322,
12 or 50503. The commissioner shall not revoke the license if, within
13 10 days from the effective date of the revocation order, the licensee
14 secures a court order restraining the enforcement of the
15 commissioner's revocation order.

16 ~~SEC. 77. Section 50328 of the Financial Code is amended to~~
17 ~~read:~~

18 ~~50328. Except in the case of an exempt person, whenever the~~
19 ~~commissioner deems it to be necessary for the public interest, the~~
20 ~~commissioner has continuous authority to exercise the powers set~~
21 ~~forth in this division. These powers may be exercised whether or~~
22 ~~not an application for a license has been filed with the~~
23 ~~commissioner, any license has been issued, or if issued, has been~~
24 ~~surrendered, suspended, or revoked.~~

25 ~~SEC. 78.~~

26 SEC. 77. Section 50333 of the Financial Code is amended to
27 read:

28 50333. (a) The commissioner shall apply the guidance on
29 nontraditional mortgage product risks published on November 14,
30 2006, by the Conference of State Bank Supervisors and the
31 American Association of Residential Mortgage Regulators, and
32 the Statement on Subprime Mortgage Lending published on July
33 17, 2007, by the aforementioned entities and the National
34 Association of Consumer Credit Administrators, to licensees.

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

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

1 by his or her employer in accordance with this division and
2 applicable federal law and regulation.

3 ~~SEC. 79.~~

4 *SEC. 78.* Section 50401 of the Financial Code is amended to
5 read:

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

39 In order for the commissioner to calculate the assessment under
40 this section, each licensee shall file an annual report for the

1 calendar year just ended containing the information required by
2 the commissioner on or before March 1 of the year in which the
3 assessment is to be calculated.

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

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

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

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

34 ~~SEC. 79.5.~~

35 *SEC. 79.* Section 50513 is added to the Financial Code, to read:

36 50513. (a) The commissioner may do one or more of the
37 following:

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

1 (2) Deny, suspend, revoke, condition, or decline to renew a
2 mortgage loan originator license if an applicant or licensee fails
3 at any time to meet the requirements of Section 50141 or 50144,
4 or withholds information or makes a material misstatement in an
5 application for a license or license renewal.

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

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

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

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

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

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

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

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

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

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

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

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

9 SEC. 82. Section 50700 of the Financial Code is amended to
10 read:

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

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

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

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

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

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

38 (1) Provide brokerage services through independent contractors.

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

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

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

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

39 (e) The loan brokerage agreement shall contain a detailed
40 description of the services the licensee agrees to perform for the

1 borrower, and a good faith estimate of any fees the licensee will
2 receive for those services, whether paid by the borrower, the
3 institutional lender, or both.

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

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

13 (1) Rescind the brokerage agreement.

14 (2) Recover fees paid by the borrower to the licensee for
15 brokerage services rendered by the licensee pursuant to the
16 agreement.

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

19 (h) If the loan brokerage agreement fails to set forth the rights
20 in subdivision (g), these rights shall be implied by operation of
21 law.

22 (i) The loan brokerage agreement shall be the only agreement
23 between the borrower and the licensee with respect to a single
24 loan.

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

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

36 (2) An application fee.

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

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

5 (1) The agreement specifies the services to be rendered for the
6 application fee.

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

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

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

16 SEC. 84. Section 50705 of the Financial Code is repealed.

17 SEC. 85. Section 18034 is added to the Health and Safety Code,
18 to read:

19 18034. (a) A dealer, as defined in Section 18002.6, or a
20 salesperson, as defined in Section 18013, is not required to be
21 licensed as a mortgage loan originator under the provisions of state
22 law that implement the federal Secure and Fair Enforcement for
23 Mortgage Licensing Act of 2008 (Public Law 110-289), if the
24 dealer or salesperson performs only administrative or clerical tasks
25 on behalf of a person meeting the definition of a mortgage loan
26 originator, and if the dealer or salesperson does not accept
27 compensation from a lender, mortgage loan originator, or from
28 any agent of any lender or mortgage loan originator.

29 (b) For purposes of this section, the term “administrative and
30 clerical tasks” means the receipt, collection, and distribution of
31 information common for the processing or underwriting of a loan
32 in the mortgage industry and communication with a consumer to
33 obtain information necessary for the processing or underwriting
34 of a residential mortgage loan.

35 SEC. 86. The Legislature finds and declares that Sections 6,
36 20, and ~~62~~ 61 of this act imposes a limitation on the public’s right
37 of access to the meetings of public bodies or the writings of public
38 officials and agencies within the meaning of Section 3 of Article
39 I of the California Constitution. Pursuant to that constitutional
40 provision, the Legislature makes the following findings to

1 demonstrate the interest protected by this limitation and the need
2 for protecting that interest:

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

9 SEC. 87. Every person who is required to hold a mortgage loan
10 originator license under the California Finance Lenders Law or
11 the California Residential Mortgage Lending Act shall obtain that
12 license by July 31, 2010. Every person who is required to hold a
13 mortgage loan originator license endorsement under the Real Estate
14 Law shall obtain that license endorsement by December 31, 2010.
15 No person required to hold a mortgage loan originator license
16 under the California Finance Lenders Law or the California
17 Residential Mortgage Lending Act shall be required to obtain that
18 license before July 1, 2010. No person required to hold a mortgage
19 loan originator license endorsement under the Real Estate Law
20 shall be required to obtain that license endorsement before
21 December 1, 2010.

22 SEC. 88. The provisions of this act are severable. If any
23 provision of this act or its application is held invalid, that invalidity
24 shall not affect other provisions or applications that can be given
25 effect without the invalid provision or application.

26 SEC. 89. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.

35 SEC. 90. *This act is an urgency statute necessary for the*
36 *immediate preservation of the public peace, health, or safety within*
37 *the meaning of Article IV of the Constitution and shall go into*
38 *immediate effect. The facts constituting the necessity are:*

39 *In order for the Department of Real Estate and the Department*
40 *of Corporations to begin initiating the operational changes*

- 1 *necessary to implement the federal Secure and Fair Enforcement*
- 2 *for Mortgage Licensing Act of 2008 within the timeframes required*
- 3 *by federal law, it is necessary that this act take effect immediately.*

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