

Assembly Bill No. 2666

CHAPTER 264

An act to amend Sections 22012, 22013, 22065, 22100, 22712, 50002, 50003, 50003.5, and 50327 of, and to add Sections 22756, 22757, and 50316.5 to, the Financial Code, relating to mortgage loan originators.

[Approved by Governor September 7, 2012. Filed with
Secretary of State September 7, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2666, Committee on Banking and Finance. Mortgage loan originators.

(1) Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and brokers by the Commissioner of Corporations. Existing law, the California Residential Mortgage Lending Act, prohibits a person from engaging in the business of making residential mortgage loans or servicing residential mortgage loans in the state without a license from the commissioner. Existing law defines a "mortgage loan originator" and specifies individuals who are not mortgage loan originators, and defines other terms for purposes of the law and the act. The willful violation of the law or the act is a crime.

This bill would provide that a government employee and an employee of a nonprofit organization who originate loans exclusively in their capacity as an employee, under certain conditions as specified, are not mortgage loan originators under the California Finance Lenders Law or the California Residential Mortgage Lending Act.

(2) Existing law prohibits a person from engaging in the business of a finance lender or broker without obtaining a license from the commissioner.

This bill would prohibit an individual from engaging in the business of a mortgage loan originator with respect to any dwelling in this state without obtaining and maintaining annually a license from the commissioner. The bill would exempt a registered mortgage loan originator, as defined, from this licensure requirement when he or she is employed by a depository institution or an affiliated company, as specified, or an institution regulated by the Farm Credit Administration.

(3) Existing law authorizes the commissioner to order an unlicensed person who is engaged in business as a broker or finance lender, or a licensee who is violating the Finance Lenders Law, to desist from engaging in that business or violating the law, as specified.

The bill would also authorize the commissioner to order an unlicensed person engaged in the business of a mortgage loan originator or a licensed mortgage loan originator to desist from violating these provisions. The bill would prohibit a person engaged in the business of making or brokering residential mortgage loans or the business of a mortgage loan originator

from paying, receiving any compensation, as specified, for performing services in violation of these provisions.

(4) Under existing law an employee of a licensed residential mortgage lender or licensed mortgage loan originator or of an exempt person is not required to be licensed when acting within the scope of his or her employment.

Existing law allows a person not subject to the licensure provisions to apply to the commissioner for an exempt company registration for the purpose of sponsoring one or more individuals required to be licensed as mortgage loan originators, provided that the person applying complies with all rules and orders that the commissioner deems necessary, as specified. Existing law also requires those mortgage loan originators to be covered under an exclusive written contract with, and originate mortgage loans solely on behalf of, that exempt person, hold a current insurance producer license, as specified, and have a current appointment notice, as specified.

This bill would apply those additional requirements only to a mortgage loan originator who is also an insurance producer.

(5) Existing law authorizes the commissioner, after notice and a reasonable opportunity to be heard, to suspend or revoke a residential mortgage lender or mortgage loan originator license if the licensee has, among other things, violated any provision of the California Residential Mortgage Lending Act, or rule order of the commissioner under the act, and provides that the commissioner's power of investigation and examination is not terminated by the surrender, suspension, or revocation of a license.

This bill would authorize the commissioner to also deny or decline to renew a license under those circumstances, and would provide that the commissioner's power of investigation and examination is not terminated by the denial or nonrenewal of a license.

(6) Because this bill would create new crimes under the California Finance Lenders Law and the California Residential Mortgage Lending Act, the bill would create 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.

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

SECTION 1. Section 22012 of the Financial Code is amended to read:

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

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

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

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

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

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

(g) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage 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.

(i) For purposes of Section 22109.1, “expungement” means the subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such individual to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the accusation, information, or indictment. With respect to criminal convictions in another state, that state’s definition of expungement will apply.

SEC. 2. Section 22013 of the Financial Code is amended 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 3 of Part 1 of Division 4 of the Business and Professions Code and the SAFE Act.

(5) An individual who is an employee of a federal, state, or local government agency or housing finance agency and who acts as a loan originator only pursuant to his or her official duties as an employee of the federal, state, or local government agency or housing finance agency.

(A) For purposes of this paragraph, the term “employee” means an individual whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.

(B) For purposes of this paragraph, the term “housing finance agency” means any authority:

(i) That is chartered by a state to help meet the affordable housing needs of the residents of the state.

(ii) That is supervised directly or indirectly by the state government.

(iii) That is subject to audit and review by the state in which it operates.

(6) (A) An employee of a bona fide nonprofit organization who exclusively originates residential mortgage loans for a bona fide nonprofit organization, and who acts as a mortgage loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower.

(B) To qualify for the exemption under this paragraph, the bona fide nonprofit organization under this paragraph must register with the department on a form prescribed by the commissioner, along with documentation of all of the following by December 31 of each year:

(i) Status of a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986.

(ii) That the organization promotes affordable housing or provides home ownership education or similar services.

(iii) That the organization conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes.

(iv) That the organization receives funding and revenue, and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interests of its clients.

(v) That the organization compensates employees in a manner that does not incentivize employees to act other than in the best interests of its clients.

(vi) That the organization provides to, or identifies for, the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.

(vii) That the organization is certified by the United States Department of Housing and Urban Development as a housing counselor who engages solely in traditional housing counseling services, if applicable.

(C) The commissioner may periodically require reports regarding the activities of the bona fide nonprofit organization, and shall examine the nonprofit organization's books and records in accordance with the regulations of the United States Department of Housing and Urban Development, or any successor guidance or requirement by the Consumer Financial Protection Bureau. If the nonprofit organization fails to provide documentation as required by subparagraph (B), or if it does not continue to meet the criteria under subparagraph (B), the commissioner may revoke the nonprofit organization's status as a registered bona fide nonprofit organization.

(D) For residential mortgage loans to have terms that are favorable to the borrower, the terms shall be consistent with loan origination in a public or charitable context, rather than a commercial context.

(E) In making its determinations and examinations, the commissioner may rely on the receipt and review of:

(i) Reports filed with federal, state, or local housing agencies and authorities.

(ii) Reports and attestations prescribed by the commissioner by rule or order.

(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. 3. Section 22065 of the Financial Code is amended to read:

22065. (a) Persons not subject to this division may apply to the commissioner for an exempt company registration for the purpose of sponsoring one or more individuals required to be licensed as mortgage loan originators pursuant to the federal SAFE Act.

(b) An exempt person applying under the exempt company registration procedure shall comply with all rules and orders that the commissioner

deems necessary to ensure compliance with the federal SAFE Act and shall pay an annual registration fee established by the commissioner.

(c) (1) A mortgage loan originator who is an insurance producer eligible for licensure pursuant to this section shall meet all of the following requirements:

(A) Be covered under an exclusive written contract with, and originate mortgage loans solely on behalf of, that exempt person.

(B) Hold a current insurance producer license under Article 3 (commencing with Section 1631) of Chapter 5 of Part 2 of Division 1 of the Insurance Code that is not suspended or revoked.

(C) Have a current notice of appointment under Article 9 (commencing with Section 1702) of Chapter 5 of Part 2 of Division 1 of the Insurance Code from an insurer that controls, is controlled by, or is under common control with that exempt person.

(2) A licensed mortgage loan originator who is an insurance producer for an insurer authorized to do business in this state may originate loans on behalf of a person registered pursuant to subdivision (a) or on behalf of a licensed finance lender that originates loans exclusively for a single person that is not subject to licensure pursuant to subdivision (a) of Section 22050.

SEC. 4. Section 22100 of the Financial Code is amended to read:

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

(b) Every licensee engaging in the business of making or brokering residential mortgage loans shall require that every mortgage loan originator employed or compensated by that licensee obtains and maintains a mortgage loan originator license from the commissioner under this division or Division 20 (commencing with Section 50000), or has first obtained a license endorsement from the Commissioner of Real Estate pursuant to Article 2.1 (commencing with Section 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code.

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

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

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

(f) An individual 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 this division and any rules promulgated by the commissioner under this chapter.

(g) A registered mortgage loan originator, as defined in subdivision (c) of Section 22013, is exempt from licensure under this section when he or she is employed by:

- (1) A depository institution.
- (2) A subsidiary of a depository institution that is owned and controlled by a depository institution and regulated by a federal banking agency.
- (3) An institution regulated by the Farm Credit Administration.

SEC. 5. Section 22712 of the Financial Code is amended to read:

22712. Whenever, in the opinion of the commissioner, any person is engaged in the business as a broker or finance lender, or a mortgage loan originator, as defined in this division, without a license from the commissioner, or any licensee is violating any provision of this division, the commissioner may order that person or licensee to desist and to refrain from engaging in the business or further violating this division. If, within 30 days after the order is served, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded. For purposes of this section, "licensee" includes a mortgage loan originator.

SEC. 6. Section 22756 is added to the Financial Code, to read:

22756. Notwithstanding any other law, any application for licensure, amendment to the application or registration document or notice filed under any of the laws administered by the Department of Corporations, or record otherwise required to be filed in this state as an electronic record pursuant to a nationwide central depository for information regarding licensees, including mortgage loan originators, or any electronic record filed through the Nationwide Mortgage Licensing System and Registry, shall be deemed to be a valid original document upon reproduction to paper form by the Department of Corporations.

SEC. 7. Section 22757 is added to the Financial Code, to read:

22757. A finance lender, broker, or mortgage loan originator licensed under this division shall not pay any commission, fee, or other compensation to an unlicensed individual for conducting activities that require a license, unless that unlicensed individual is exempt from licensure pursuant to this division.

SEC. 8. Section 50002 of the Financial Code is amended to read:

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

(b) (1) An employee of a licensee or of a person exempt from licensure is not required to be licensed when acting within the scope of his or her employment and shall be exempt from any other law from which his or her employer is exempt, except that an individual who meets the definition of a mortgage loan originator in Section 50003.5 shall be subject to this division.

(2) A person exempt from this division may apply to the commissioner for an exempt company registration for the purpose of sponsoring one or

more individuals required to be licensed as mortgage loan originators as defined in Section 50003.5 and pursuant to the SAFE Act.

(3) An exempt person applying under the exempt company registration procedure shall comply with all rules and orders that the commissioner deems necessary to ensure compliance with the SAFE Act and shall pay an annual registration fee established by the commissioner.

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

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

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

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

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

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

(6) An agency or other instrumentality of the federal 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 by a residential mortgage lender or servicer may not perform the activities of a loan processor or underwriter under this division unless the independent contractor loan processor or underwriter obtains and maintains a license under Section 50120.

SEC. 9. Section 50003 of the Financial Code is amended to read:

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

(b) “Borrower” means the loan applicant.

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

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

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

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

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

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

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

(j) “Institutional investor” 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 bank or industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurance company, or subsidiary or affiliate of one of the preceding entities, doing business under the authority of or 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) Trustees of pension, profit-sharing, or welfare funds, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000), except pension, profit-sharing, or welfare funds of a licensee or its affiliate, self-employed individual retirement plans, or individual retirement accounts.

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

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

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

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

(6) A residential mortgage lender or servicer licensed to make residential mortgage loans under this law or an affiliate or 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), Chapter 3 (commencing with Section 50130), or Chapter 3.5 (commencing with Section 50140).

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

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

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

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

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

(t) “Own funds” means (1) cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on a lender’s financial statements, whether secured or unsecured, or (2) a lender’s affiliate’s cash, corporate capital, or warehouse credit lines at commercial banks or other sources that are liability items on the affiliate’s financial

statements, whether secured or unsecured. “Own funds” does not include funds provided by a third party to fund a loan on condition that the third party will subsequently purchase or accept an assignment of that loan.

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

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

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

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

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

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

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

(ab) For purposes of Section 50141, “expungement” means the subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such individual to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the accusation, information, or indictment. With respect to criminal convictions in another state, that state’s definition of expungement will apply.

SEC. 10. Section 50003.5 of the Financial Code is amended to read:

50003.5. (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 50003.6. 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 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 3 of Part 1 of Division 4 of the Business and Professions Code and the SAFE Act.

(5) An individual who is an employee of a federal, state, or local government agency or housing finance agency and who acts as a loan originator only pursuant to his or her official duties as an employee of the federal, state, or local government agency or housing finance agency.

(A) For purposes of this paragraph, the term “employee” means an individual whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.

(B) For purposes of this paragraph, the term “housing finance agency” means any authority:

(i) That is chartered by a state to help meet the affordable housing needs of the residents of the state.

(ii) That is supervised directly or indirectly by the state government.

(iii) That is subject to audit and review by the state in which it operates.

(6) (A) An employee of a bona fide nonprofit organization who exclusively originates residential mortgage loans for a bona fide nonprofit organization, and who acts as a mortgage loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower.

(B) To qualify for the exemption under this paragraph, the bona fide nonprofit organization under this paragraph must register with the department on a form prescribed by the commissioner, along with documentation of all of the following by December 31 of each year:

(i) Status of a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986.

(ii) That the organization promotes affordable housing or provides home ownership education or similar services.

(iii) That the organization conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes.

(iv) That the organization receives funding and revenue, and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interests of its clients.

(v) That the organization compensates employees in a manner that does not incentivize employees to act other than in the best interests of its clients.

(vi) That the organization provides to, or identifies for, the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.

(vii) That the organization is certified by the United States Department of Housing and Urban Development as a housing counselor who engages solely in traditional housing counseling services, if applicable.

(C) The commissioner may periodically require reports regarding the activities of the bona fide nonprofit organization, and shall examine the nonprofit organization's books and records in accordance with the regulations of the United States Department of Housing and Urban Development, or any successor guidance or requirement by the Consumer Financial Protection Bureau. If the nonprofit organization fails to provide documentation as required by subparagraph (B), or if it does not continue to meet the criteria under subparagraph (B), the commissioner may revoke the nonprofit organization's status as a registered bona fide nonprofit organization.

(D) For residential mortgage loans to have terms that are favorable to the borrower, the terms shall be consistent with loan origination in a public or charitable context, rather than a commercial context.

(E) In making its determinations and examinations, the commissioner may rely on the receipt and review of:

(i) Reports filed with federal, state, or local housing agencies and authorities.

(ii) Reports and attestations prescribed by the commissioner by rule or order.

(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. 11. Section 50316.5 is added to the Financial Code, to read:

50316.5. Notwithstanding any other law, any application for licensure, amendment to the application or registration document or notice filed under any of the laws administered by the Department of Corporations, or record otherwise required to be filed in this state as an electronic record pursuant to a nationwide central depository for information regarding licensees, including mortgage loan originators, or any electronic record filed through the Nationwide Mortgage Licensing System and Registry, shall be deemed to be a valid original document upon reproduction to paper form by the Department of Corporations.

SEC. 12. Section 50327 of the Financial Code is amended to read:

50327. (a) The commissioner may, after notice and a reasonable opportunity to be heard, deny, decline to renew, suspend, or revoke any license if the commissioner finds that:

(1) The licensee has violated any provision of this division or any rule or order of the commissioner thereunder.

(2) Any fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.

(b) The power of investigation and examination by the commissioner is not terminated by the denial, nonrenewal, surrender, suspension, or revocation of any license issued by him or her.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.