

Introduced by Senator Walters

February 18, 2011

An act to amend Section 50003 of the Financial Code, relating to residential mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 820, as introduced, Walters. Residential mortgage lending.

Existing law, the California Residential Mortgage Lending Act, provides for the licensure and regulation of residential mortgaging lending and serving. Existing law provides that a person shall not be deemed to control a licensee solely by reason of his or her status as an officer or a director of the licensee.

This bill would make a nonsubstantive change to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

- 1 SECTION 1. Section 50003 of the Financial Code is amended
2 to read:
3 50003. (a) "Annual audit" means a certified audit of the
4 licensee's books, records, and systems of internal control performed
5 by an independent certified public accountant in accordance with
6 generally accepted accounting principles and generally accepted
7 auditing standards.
8 (b) "Borrower" means the loan applicant.
9 (c) "Buy" includes exchange, offer to buy, or solicitation to
10 buy.
11 (d) "Commissioner" means the Commissioner of Corporations.

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

12 (f) “Depository institution” has the same meaning as in Section
13 3 of the Federal Deposit Insurance Act, and includes any credit
14 union.

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

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

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

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

39 (1) The United States or any state, district, territory, or
40 commonwealth thereof, or any city, county, city and county, public

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

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

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

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

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

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

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

35 (6) A residential mortgage lender or servicer licensed to make
36 residential mortgage loans under this law or an affiliate or
37 subsidiary of that person.

38 (7) Any person who is licensed as a securities broker or
39 securities dealer under any law of this state, or of the United States,
40 or any employee, officer or agent of that person, if that person is

1 acting within the scope of authority granted by that license or an
2 affiliate or subsidiary controlled by that broker or dealer, in
3 connection with a transaction involving the offer, sale, purchase,
4 or exchange of one or more promissory notes secured directly or
5 indirectly by liens on real property or a security representing an
6 ownership interest in a pool of promissory notes secured directly
7 or indirectly by liens on real property, and the offer and sale of
8 those securities is qualified under the California Corporate
9 Securities Law of 1968 or registered under federal securities laws,
10 or exempt from qualification or registration.

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

14 (9) A business development company as defined in Section
15 2(a)(48) of the Investment Company Act of 1940 or a Small
16 Business Investment Company licensed by the United States Small
17 Business Administration under Section 301(c) or (d) of the Small
18 Business Investment Act of 1958.

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

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

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

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

29 (i) Interest-bearing obligations.

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

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

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

35 (i) Rated as “investment grade” by Standard and Poor’s
36 Corporation or Moody’s Investors Service, Inc. “Investment grade”
37 means that the securities will be rated by Standard and Poor’s
38 Corporation as AAA, AA, A, or BBB or by Moody’s Investors
39 Service, Inc. as Aaa, Aa, A, or Baa, including any of those ratings

1 with “+” or “—” designation or other variations that occur within
2 those ratings.

3 (ii) Sold to an institutional investor.

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

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

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

16 (2) Any bank, trust company, savings bank or savings and loan
17 association, credit union, industrial loan company, or insurance
18 company, or service or investment company that is wholly owned
19 and controlled by one of the preceding entities, doing business
20 under the authority of and in accordance with a license, certificate,
21 or charter issued by the United States or any state, district, territory,
22 or commonwealth of the United States.

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

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

28 (l) “Law” means the California Residential Mortgage Lending
29 Act.

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

37 (n) “Licensee” means, depending on the context, a person
38 licensed under Chapter 2 (commencing with Section 50120),
39 Chapter 3 (commencing with Section 50130), or Chapter 3.5
40 (commencing with Section 50140).

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

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

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

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

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

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

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

- 1 (v) “Residential real property” or “residential real estate” means
2 real property located in this state that is improved by a one-to-four
3 family dwelling.
- 4 (w) “SAFE Act” means the federal Secure and Fair Enforcement
5 for Mortgage Licensing Act of 2008 (Public Law 110-289).
- 6 (x) “Service” or “servicing” means receiving more than three
7 installment payments of principal, interest, or other amounts placed
8 in escrow, pursuant to the terms of a mortgage loan and performing
9 services by a licensee relating to that receipt or the enforcement
10 of its receipt, on behalf of the holder of the note evidencing that
11 loan.
- 12 (y) “Sell” includes exchange, offer to sell, or solicitation to sell.
- 13 (z) “Unique identifier” means a number or other identifier
14 assigned by protocols established by the Nationwide Mortgage
15 Licensing System and Registry.
- 16 (aa) For purposes of Sections 50142, 50143, and 50145,
17 “nontraditional mortgage product” means any mortgage product
18 other than a 30-year fixed rate mortgage.