

California Statutes (California Finance Law)

§ 22000. Short title

This division is known and may be cited as the “California Financing Law.”

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995. Amended by Stats.2017, c. 475 (A.B.1284), § 4, eff. Oct. 4, 2017.)

§ 22001. Construction and application of division; consumer loans; commercial loans

(a) This division shall be liberally construed and applied to promote its underlying purposes and policies, which are:

- (1) To ensure an adequate supply of credit to borrowers in this state.
- (2) To simplify, clarify, and modernize the law governing loans made by finance lenders.
- (3) To foster competition among finance lenders.
- (4) To protect borrowers against unfair practices by some lenders, having due regard for the interests of legitimate and scrupulous lenders.
- (5) To permit and encourage the development of fair and economically sound lending practices.
- (6) To encourage and foster a sound economic climate in this state.
- (7) To protect property owners from deceptive and misleading practices that threaten the efficacy and viability of property assessed clean energy financing programs.

(b) Consumer loans, as defined in Sections 22203 and 22204, are subject to this chapter, Chapter 2 (commencing with Section 22200), Article 1 (commencing with Section 22700) of Chapter 4, and Article 2 (commencing with Section 22750) of Chapter 4.

(c) Commercial loans, as defined in Section 22502, are subject to this chapter, Chapter 3 (commencing with Section 22500), Article 1 (commencing with Section 22700) of Chapter 4, and Article 3 (commencing with Section 22780) of Chapter 4.

(d) A program administrator, as defined in Section 22018, is subject to this chapter, Chapter 3.5 (commencing with Section 22680), and Article 1 (commencing with Section 22700) of Chapter 4.

(e) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 6, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22002. Class of exempt persons created; preservation of existing exemptions

To accomplish its underlying purposes and policies, this division creates a class of exempt persons pursuant to Section 1 of Article XV of the California Constitution.

It is the intent of the Legislature to preserve existing exemptions under Section 1 of Article XV of the Constitution and statutory law for (a) personal property brokers formerly regulated by the Personal Property Brokers Law; (b) lenders formerly regulated by the Consumer Finance Lenders Law; and (c) lenders formerly regulated by the Commercial Finance Lenders Law; and no finding that any provision of this division is invalid with respect to a particular lender or class of lenders shall affect the enforceability of this division with respect to any of the foregoing classifications of lenders, which shall in all events continue to be exempted by this division.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22003. Definitions to govern construction of division

Unless the context otherwise requires, the definitions given in this article govern the construction of this division.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22003.5. “Assessment contract” defined

“Assessment contract” means an agreement entered into between all property owners of record on real property and a public agency in which, for voluntary contractual assessments imposed on the real property, the public agency provides a PACE assessment for the installation of one or more efficiency improvements on the real property in accordance with a PACE program, specified in paragraph (2) of subdivision (a) of Section 5898.20 of the Streets and Highways Code, or Section 5899, 5899.3, or 5899.4 of the Streets and Highways Code, or a special tax described in Section 53328.1 of the Government Code.

This section shall remain in effect only until January 1, 2029, and as of that date is repealed.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 7, eff. Oct. 4, 2017. Amended by Stats.2018, c. 837 (S.B.465), § 2, eff. Jan. 1, 2019.)

§ 22004. “Broker” defined

“Broker” includes any person who is engaged in the business of negotiating or performing any act as broker in connection with loans made by a finance lender.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22005. “Commissioner” defined

“Commissioner” means the Commissioner of Business Oversight.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995. Amended by Gov.Reorg.Plan No. 2 of 2011-2012, § 64, eff. July 3, 2012, operative July 1, 2013; Stats.2013, c. 353 (S.B.820), § 65, eff. Sept. 26, 2013, operative July 1, 2013.)

§ 22006. Uniform Commercial Code definitions

As used in this division, the terms “security interest,” “accounts,” “chattel paper,” “documents,” “general intangibles,” “goods,” and “instruments” are as defined in the Uniform Commercial Code.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22007. “Licensee” defined

(a) “Licensee” means any finance lender, broker, or program administrator who receives a license in accordance with this division.

(b) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 9, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22008. “Person” defined

“Person” means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, an unincorporated organization, a government, or a political subdivision of a government.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22009. Finance lender; personal property broker included

“Finance lender” includes any person who is engaged in the business of making consumer loans or making commercial loans. The business of making consumer loans or commercial loans may include lending money and taking, in the name of the lender, or in any other name, in whole or in part, as security for a loan, any contract or obligation involving the forfeiture of rights in or to personal property, the use and possession of which property is retained by other than the mortgagee or lender, or any lien on, assignment of, or power of attorney relative to wages, salary, earnings, income, or commission.

It is the intent of the Legislature that the definition of finance lender shall be interpreted to include a personal property broker as referenced in Section 1 of Article XV of the California Constitution.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22010. “Finance lender,” “broker,” and “program administrator”; persons excluded from definition

(a) “Finance lender,” “broker,” and “program administrator” do not include employees regularly employed at the location specified in the license of the finance lender, broker, or program administrator, except that an employee, when acting within the scope of his or her employment, shall be exempt from any other law from which his or her employer is exempt.

(b) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 11, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22011. “Regulatory ceiling provision” defined

A “regulatory ceiling provision” is a statement in a section or subdivision that specifies an original bona fide principal loan amount at or above which that section or subdivision does not apply to a loan.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22012. Definitions

(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.

Credits

(Added by Stats.2009, c. 160 (S.B.36), § 9, eff. Oct. 11, 2009. Amended by Stats.2012, c. 264 (A.B.2666), § 1.)

§ 22013. “Mortgage loan originator” defined; exclusions; registered mortgage loan originator; loan processor or underwriter

(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 1986¹.

(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.

Credits

(Added by Stats.2009, c. 160 (S.B.36), § 10, eff. Oct. 11, 2009. Amended by Stats.2012, c. 264 (A.B.2666), § 2.)

§ 22014. Loan processor or underwriter; advertising; mortgage loan originator activities; independent contractor

(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 mortgage 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 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 mortgage loan originator.

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

Credits

(Added by Stats.2009, c. 160 (S.B.36), § 11, eff. Oct. 11, 2009.)

§ 22015. “PACE assessment” defined

“PACE assessment” means a voluntary contractual assessment, voluntary special tax, or special tax, as described in subdivisions (a), (b), and (c) of Section 26054 of the Public Resources Code.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 12, eff. Oct. 4, 2017.)

§ 22016. “PACE program” defined

“PACE program” means a program in which financing is provided for the installation of efficiency improvements on real property and funded through the use of property assessments, as well as other program components defined in this section, established pursuant to any of the following:

(a) Chapter 29 (commencing with Section 5898.10) of Part 3 of Division 7 of the Streets and Highways Code.

(b) The Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code).

(c) A charter city’s constitutional authority under Section 5 of Article XI of the California Constitution.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 13, eff. Oct. 4, 2017.)

§ 22017. “PACE solicitor” and “PACE solicitor agent” defined; persons not included in definition

(a) “PACE solicitor” means a person authorized by a program administrator to solicit a property owner to enter into an assessment contract.

(b) “PACE solicitor agent” means an individual who is employed or retained by, and acts on behalf of, a PACE solicitor to solicit a property owner to enter into an assessment contract.

(c) “PACE solicitor” and “PACE solicitor agent” do not include any of the following:

- (1) A person employed by a program administrator.
- (2) A person, including a home improvement contractor or subcontractor, who does not solicit property owners to enter into assessment contracts.
- (3) A person who performs purely administrative or clerical tasks.
- (4) A person who advertises a PACE program, if the content of the advertising is created, prepared, or approved by a program administrator, and advertising is subject to, and in compliance with this division.
- (5) A person who obtains information regarding prospective applicants for PACE financing, or who provides to a program administrator information regarding prospective applicants for PACE financing, if that information was not obtained in connection with advertising or soliciting a PACE program.
- (6) A person who only solicits a property owner to enter into an assessment contract with a person who is not considered a program administrator within the meaning of subdivision (b) of Section 22018.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 14, eff. Oct. 4, 2017. Amended by Stats.2018, c. 813 (A.B.2063), § 1, eff. Jan. 1, 2019.)

§ 22018. “Program administrator” defined; persons not included in definition

(a) “Program administrator” means a person administering a PACE program on behalf of, and with the written consent of, a public agency. “Program administrator” does not include a public agency.

(b) For purposes of this division, “program administrator” does not include a person who meets both of the following conditions:

- (1) The person does not administer a PACE program that provides financing for the installation of efficiency improvements on residential property with four or fewer units.
- (2) The person does not administer a PACE program that provides financing for the installation of efficiency improvements on real property with a market value of less than one million dollars (\$1,000,000).

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 15, eff. Oct. 4, 2017. Amended by Stats.2018, c. 813 (A.B.2063), § 2, eff. Jan. 1, 2019.)

§ 22018.5. “Property owner” defined

“Property owner” means all property owners of record on the property subject to the PACE assessment.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 16, eff. Oct. 4, 2017.)

§ 22019. “Efficiency improvement” defined

“Efficiency improvement” means one or more permanent improvements fixed to real property financed through a PACE assessment.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 17, eff. Oct. 4, 2017.)

§ 22020. “Public agency” defined

“Public agency” means a city, including a charter city, county, city and county, municipal utility district, community services district, community facilities district, joint powers authority, sanitary district, sanitation district, or water district, as defined in Section 20200 of the Water Code, that has established or participates in a PACE program, and utilizes a program administrator.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 18, eff. Oct. 4, 2017.)

§ 22050. Application of division

(a) This division does not apply to any person doing business under any law of any state or of the United States relating to banks, trust companies, savings and loan associations, insurance premium finance agencies, credit unions, small business investment companies, community advantage lenders, California business and industrial development corporations when acting under federal law or other state authority, or licensed pawnbrokers when acting under the authority of that license.

“Community advantage lender” means an entity authorized by the United States Small Business Administration to deliver community advantage loans.

(b) This division does not apply to a check casher who holds a valid permit issued pursuant to Section 1789.37 of the Civil Code when acting under the authority of that permit, and shall not apply to a person holding a valid license issued pursuant to Section 23005 of the Financial Code when acting under the authority of that license.

(c) This division does not apply to a college or university making a loan for the purpose of permitting a person to pursue a program or course of study leading to a degree or certificate.

(d) This division does not apply to a broker-dealer acting pursuant to a certificate then in effect and issued pursuant to Section 25211 of the Corporations Code.

(e) This division does not apply to any person who makes five or fewer loans in a 12-month period, these loans are commercial loans as defined in Section 22502, and the loans are incidental to the business of the person relying upon the exemption.

(f) This division does not apply to any public corporation as defined in Section 67510 of the Government Code, any public entity other than the state as defined in Section 811.2 of the Government Code, or any agency of any one or more of the foregoing, when making any loan so long as the public corporation, public entity, or agency of any one or more of the foregoing complies with all applicable federal and state laws and regulations.

Credits

(Added by Stats.2002, c. 777 (S.B.898), § 9, operative March 1, 2004. Amended by Stats.2004, c. 17 (A.B.971), § 12, eff. Feb. 23, 2004, operative Dec. 31, 2004; Stats.2007, c. 101 (S.B.998), § 18; Stats.2012, c. 328 (S.B.976), § 1; Stats.2013, c. 243 (A.B.1091), § 1.)

§ 22050.5. Application of division regarding commercial loan

(a) This division does not apply to any person who makes no more than one loan in a 12-month period if that loan is a commercial loan as defined in Section 22502.

(b) This section shall remain in effect only until January 1, 2022, and as of that date is repealed.

Credits

(Added by Stats.2016, c. 478 (S.B.777), § 1, eff. Jan. 1, 2017. Amended by Stats.2017, c. 516 (S.B.363), § 7, eff. Jan. 1, 2018.)

§ 22051. Nonprofit agricultural cooperative associations; agricultural marketing associations

This division does not apply to the following:

(a) Any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code that loans or advances money in connection with any activity mentioned in that chapter.

(b) Any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, or bee products on a cooperative nonprofit basis that loans or advances money to its members or in connection with those businesses.

(c) Any corporation securing money or credit from any federal intermediate credit bank organized and existing pursuant to the provisions of an act of Congress entitled "Agricultural Credits Act of 1923" that loans or advances money or credit so secured.

(d) Any corporation created pursuant to the provisions of Part 5 (commencing with Section 14000) of Division 3 of Title 1 of the Corporations Code.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22052. Loans of credit made under specified plans; credit cards

This division does not apply to any loan of credit made by a person not licensed under this division pursuant to a plan having all of the following characteristics:

(a) Credit cards issued pursuant to a written application and to the plan whereby the organization issuing the cards can acquire those obligations that its members in good standing incur with those persons with whom the organization has entered into written agreements setting forth the plan, and where the obligations are incurred pursuant to those agreements; or whereby the organization issuing the cards can extend credit to its members.

(b) The fee for the credit cards is designed to cover the administrative costs of the plan and is imposed upon the issuance of the card and on annual renewal dates thereafter.

(c) Any charges, discounts, or fees resulting from the acquisition of the charges is paid to the organization issuing the credit cards by the persons, corporations, or associations with whom the organization has entered into written agreements.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22053. Burden of proof

In any proceeding under this law, the burden of proving an exemption is upon the person claiming it.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22054. Conditional sales contracts for disposition of personal property

This division does not apply to bona fide conditional contracts of sale involving the disposition of personal property when these forms of sales agreements are not used for the purpose of evading this division.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22055. Premium financing; application of division

This division does not apply to premium financing as defined in Section 18563.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22056. California Infrastructure and Economic Development Bank; California Integrated Waste Management Board

This division does not apply to the California Infrastructure and Economic Development Bank, any program authorized pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, or to the California Integrated Waste Management Board.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995. Amended by Stats.1996, c. 1041 (A.B.3358), § 1; Stats.2000, c. 1055 (A.B.2889), § 16, eff. Sept. 30, 2000; Stats.2004, c. 225 (S.B.1097), § 10, eff. Aug. 16, 2004.)

§ 22057. Real estate brokers; loans secured by liens on real property

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

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22058. Cemetery brokers

This division does not apply to any cemetery broker licensed under the Cemetery Act (Chapter 19 (commencing with Section 9600) of Division 3 of the Business and Professions Code).

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22059. Scope of license authority

A license to act as a broker under this division does not authorize the licensee to negotiate or perform any act as a broker in connection with loans made or to be made by a lender not licensed as a finance lender under this division.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22060. Residential mortgage lenders or servicers; loans made or arranged under authority of license

This division does not apply to a loan made or arranged by a licensed residential mortgage lender or servicer when acting under the authority of that license.

Credits

(Added by Stats.1995, c. 564 (S.B.946), § 6.5.)

§ 22061. Nonprofit church extension fund

(a) This division does not apply to any nonprofit church extension fund.

(b) For purposes of this section:

(1) “Nonprofit church extension fund” means a nonprofit organization affiliated with a church, that is formed for the purpose of making loans to that church’s congregational organization or organizations for site acquisitions, new facilities, or improvements to existing facilities, purchased for the benefit of the church congregational organization.

(2) What constitutes a “church” shall be determined from the following criteria, none of which has controlling weight: a distinct legal existence; a recognized creed and form of worship; a definite and distinct ecclesiastical government; a formal code of doctrine and discipline; a distinct religious history; a membership not associated with any other religion or denomination; a complete organization of ordained ministers ministering to their congregations; ordained ministers selected after completing prescribed courses of study; a literature of its own; established places of worship; regular congregations; regular religious services; schools for the religious instruction of youth; and schools for the preparation of its ministers.

(3) “Church congregational organization” means a group of individuals who gather for the purpose of practicing the religion or manner of worship promulgated by the church with which the organization is affiliated.

(4) “Site acquisitions” means purchases of land intended for use by a church congregational organization.

(5) “New facilities” means purchases of buildings or structures intended for use by a church congregational organization.

(6) “Improvements” means purchases of materials intended to increase the quality of existing religious sites or facilities.

(c) For purposes of this section, a nonprofit church extension fund shall establish that it is exempt from federal taxation pursuant to Section 501 of Title 26 of the United States Code.

(d) For purposes of this section, no individual may be held responsible for the repayment of any loan made by a nonprofit church extension fund.

Credits

(Added by Stats.1998, c. 469 (A.B.2039), § 1.)

§ 22062. Commercial bridge loans; venture capital investment; exemption from division

(a) This division does not apply to either of the following:

(1) A commercial bridge loan made by a venture capital company to an operating company.

(2) A venture capital investment made by a venture capital company in an equity security issued by an operating company.

(b) For purposes of this section:

(1) “Venture capital company” means a person other than an individual or sole proprietorship that meets all of the following:

(A) Engages primarily in the business of promoting economic, business, or industrial development through venture capital investments or the provision of financial or management assistance to operating companies.

(B) At all times maintains at least 50 percent of its assets in venture capital investments or commitments to make venture capital investments, and maintains or, assuming consummation of the equity investment to which the commercial bridge loan relates, will maintain a material equity interest in the operating company.

(C) Approves each loan made to an operating company through the venture capital company’s board of directors, executive committee, or similar policy body, based on a reasonable belief that the loan is appropriate for the operating company after reasonable inquiry concerning the operating company’s financing objectives and financial situation.

(D) Complies, when making the loan, with all applicable federal and state laws and rules or orders governing securities transactions including, but not limited to, the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Corporate Securities Law of 1968.

(2) “Operating company” means a person that meets all of the following:

(A) Primarily engages, wholly or substantially, directly or indirectly through a majority owned subsidiary or subsidiaries, in the production or sale, or the research or development, of a product or service other than the management or investment of capital. This shall not include any of the following:

(i) A person that is either an individual or a sole proprietorship.

(ii) A person that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person.

(B) Uses all of the proceeds of the commercial bridge loan for the operations of its business.

(C) Approves each commercial bridge loan through its board of directors, executive committee, or similar policy board, in the exercise of its fiduciary duty, based on a reasonable belief that the loan is appropriate for the operating company after reasonable inquiry concerning the operating company's financing objectives and financial situation.

(3) "Commercial bridge loan" means a loan that meets all of the following criteria:

(A) A loan of a principal amount of five thousand dollars (\$5,000) or more, or any loan under an open-end credit program, whether secured by personal property or unsecured, the proceeds of which are intended by the operating company for use primarily for other than personal, family, or household purposes.

(B) Is made with a maturity date not to exceed three years, and in connection with or in bona fide contemplation of, an equity investment in the operating company.

(C) Is secured, if at all, solely by the operating company's business assets, exclusive of any real property.

(D) Is subject to the implied covenant of good faith and fair dealing under Section 1655 of the Civil Code.

(4) For purposes of paragraph (1), "venture capital investment" is an acquisition of securities in an operating company that a person, an investment adviser of the person, or an affiliated person of either, has or obtains management rights to.

(5) "Equity security" shall have the same meaning as in Section 3(a)(11) of the federal Securities Exchange Act of 1934.

(c) For purposes of paragraph (3) of subdivision (b), for the purposes of determining whether a loan is a commercial bridge loan, a venture capital company may rely on any written statement of intended purposes signed by the operating company. The statement may be a separate statement signed by the operating company or may be contained in another document signed by

the operating company, but in each case it shall be approved by its board of directors, executive committee, or similar policy body. The venture capital company may not be required to ascertain that the proceeds of the loan are used in accordance with the statement of intended purposes.

(d) For purposes of subparagraph (A) of paragraph (3) of subdivision (b), the principles set forth in Section 22551 shall be used to determine whether the specified amount of a commercial bridge loan is a bona fide principal amount.

(e) Nothing in this section is intended to abrogate or diminish the application of any other laws that are designed to protect borrowers, including, but not limited to, laws pertaining to licensing, unfair competition, usury, and conflicts of interest.

Credits

(Added by Stats.2003, c. 163 (A.B.169), § 1. Amended by Stats.2014, c. 68 (S.B.1181), § 1, eff. Jan. 1, 2015.)

§ 22063. Application of division to loans by franchisor to franchisee or subfranchisor, or by subfranchisor to franchisee

(a) This division does not apply to a franchise loan made by a franchisor to a franchisee or a subfranchisor or by a subfranchisor to a franchisee.

(b) For purposes of this section:

(1) “Franchise” means “franchise,” as defined in Section 31005 of the Corporations Code.

(2) “Franchisee” means “franchisee,” as defined in Section 31006 of the Corporations Code.

(3) “Franchisor” means “franchisor,” as defined in Section 31007 of the Corporations Code.

(4) “Area franchise” means “area franchise,” as defined in Section 31008 of the Corporations Code.

(5) “Subfranchise” means “subfranchise,” as defined in Section 31008.5 of the Corporations Code.

(6) “Subfranchisor” means “subfranchisor,” as defined in Section 31009 of the Corporations Code.

(7) “Franchised business” means a business operated pursuant to a franchise or area franchise by a franchisee or pursuant to a franchise, area franchise or subfranchise by a subfranchisor.

(8) "Franchise loan" means a commercial loan, as defined in Section 22502, made by a franchisor to a current or prospective franchisee or subfranchisor or a commercial loan by a subfranchisor to a current or prospective franchisee for the acquisition, construction, operation, development, equipping, expansion, contraction, consolidation, merger, recapitalization, reorganization, or termination of a franchised business provided that the following conditions are satisfied:

(A) The franchisor or subfranchisor making the franchise loan shall comply with all applicable federal and state franchise disclosure and registration laws, regulations, rules and orders, including, but not limited to, the California Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) and the Federal Trade Commission Franchise Rule: Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures (Code of Federal Regulations, Title 16, Chapter 1, Subchapter D, Part 436 (16 CFR 436), as amended) in connection with the offer or sale of any franchise, area franchise, or subfranchise to which the franchise loan relates.

(B) The proceeds of the franchise loan are intended by the borrowing franchisee or subfranchisor for use primarily for other than personal, family, or household purposes.

(C) The loan, if secured, is secured solely by the assets of the franchised business to which the franchise loan relates. Property used by the borrower primarily for personal, family, or household purposes, including the borrower's personal residence, shall not be taken as security for the loan.

(D) The loan is subject to the implied covenant of good faith and fair dealing under Section 1655 of the Civil Code.

(E) The lender shall fully and clearly disclose to the borrower, at or before the time the loan is made, the rates of interest, charges, and costs of the loan.

(c) For purposes of subparagraph (B) of paragraph (8) of subdivision (b), a lending franchisor or subfranchisor may rely on any written statement of intended purposes by the borrowing franchisee or subfranchisor. The statement may be a separate statement signed by the borrowing franchisee or subfranchisor or may be contained in another document signed by the borrowing franchisee or subfranchisor. The lending franchisor or subfranchisor may not be required to ascertain that the proceeds of a franchise loan are used in accordance with the statement of intended purposes.

(d) Nothing in this section is intended to abrogate or diminish the application of any other laws that are designed to protect borrowers, including, but not limited to, laws pertaining to licensing, unfair competition, usury and conflicts of interest.

Credits

(Added by Stats.2004, c. 458 (A.B.2921), § 16, eff. Sept. 10, 2004.)

§ 22064. Application of division to program-related investment by private foundation, tax-exempt organization and loan, guaranty, or investment made by public charity, tax-exempt organization meeting specified requirements

(a) This division does not apply to the following:

(1) A program-related investment defined in subsection (c) of Section 4944 of the Internal Revenue Code¹ and United States Treasury Regulations Section 53.4944-3 that is made by a private foundation, tax-exempt organization within the meaning of Section 509(a) of the Internal Revenue Code.

(2) A loan, guaranty, or investment made by a public charity, tax-exempt organization within the meaning of paragraph (1), (2), or (3) of subsection (a) of Section 509 of the Internal Revenue Code that meets all of the following requirements:

(A) The primary purpose of the loan, guaranty, or investment is to accomplish one or more of the exempt purposes of the public charity making the loan, as described in Section 170(c)(2)(B) of the Internal Revenue Code.

(B) Neither the production of income nor the appreciation of property is a significant purpose of the loan, guaranty, or investment.

(C) No purpose of the loan, guaranty, or investment is to accomplish one or more of the purposes described in Section 170(c)(2)(D) of the Internal Revenue Code.

(b) Subdivision (a) shall not exempt from the provisions of this division a tax-exempt organization that is making consumer loans as defined in Sections 22203 and 22204.

(c) A loan that is secured by any assets owned by an individual shall be exempt under subdivision (a) only if the individual providing the security is an “accredited investor” as defined in paragraph (5) or (6) of subsection (a) of Section 230.501 of Title 17 of the Code of Federal Regulations. Property held by an individual for personal, family, or household purposes, including an individual’s personal residence, may not be taken as security for a loan.

(d) A program-related investment by a private foundation, and any loan, guaranty, or investment made by a public charity that is exempt under subdivision (a) is subject to the implied covenant of good faith and fair dealing under Section 1655 of the Civil Code.

(e)(1) Subdivision (a) shall exempt from the provisions of this division a program-related investment by a private foundation, or a loan, guaranty, or investment by a public charity, only if the following conditions are satisfied:

(A) The organization making the program-related investment, loan, guaranty, or investment is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code and is organized and operated exclusively for one or more of the purposes described in Section 501(c)(3) of the Internal Revenue Code.

(B) No part of the net earnings of the organization making the program-related investment, loan, guaranty or investment inures to the benefit of a private shareholder or individual.

(C) No broker's fee will be paid in connection with the making of the program-related investment, loan, guaranty, or investment or placement of the program-related investment, loan, guaranty or investment.

(2) This subdivision does not prohibit the organization making the program-related investment, loan, guaranty, or investment from charging interest on the loan or investment or fees on the guaranty.

(f) Subdivision (a) shall only exempt from the provisions of this division a program-related investment by a private foundation or a loan, guaranty, or investment by a public charity that is made for the primary purpose of accomplishing one or more of the organization's exempt purposes described in Section 501(c)(3) of the Internal Revenue Code, and no significant purpose of which is the production of income or the appreciation of property within the meaning of subsection (c) of Section 4944 of the Internal Revenue Code. A recipient shall be required to use all funds received from the private foundation or the public charity only for the charitable purposes for which the program-related investment, loan, guaranty, or investment was made.

(g) Subdivision (a) shall only exempt from the provisions of this division a program-related investment by a private foundation or a loan, guaranty, or investment by a public charity if the organization consummates not more than 35 loans in a calendar year. In the making and negotiating of these loans, the private foundation or public charity shall take into consideration the financial ability of the recipients to repay the loans in the time and manner provided.

(h) Nothing in this section is intended to abrogate or diminish the application of any other applicable laws that are designed to govern the tax-exempt organizations described in subdivision (a), including, but not limited to, laws pertaining to recordkeeping and reporting to the Attorney General and the Internal Revenue Service or to protect borrowers, including, but not limited to, laws pertaining to licenses, unfair competition, usury, and conflicts of interest.

Credits

(Added by Stats.2005, c. 316 (A.B.865), § 1. Amended by Stats.2009, c. 103 (A.B.401), § 1.)

§ 22065. Exempt company registration; compliance with rules and orders; mortgage loan originator requirements

(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.

Credits

(Added by Stats.2011, c. 444 (S.B.217), § 2. Amended by Stats.2012, c. 264 (A.B.2666), § 3.)

§ 22066. Nonprofit organizations facilitating low-cost loans; exemption from division; conditions

(a) The Legislature finds and declares that nonprofit organizations have an important role to play in helping individuals obtain access to affordable, credit-building small dollar loans. California law should refrain from creating statutory barriers that risk slowing the growth of these loans. This section shall be liberally construed to encourage nonprofit organizations to help facilitate the making of zero-interest, low-cost loans, through lending circles and other programs and services that allow individuals to establish and build credit histories or to improve their credit scores.

(b) For the purposes of this section, an organization described in subdivision (c) shall be known as an exempt organization, and an organization described in subdivision (d) shall be known as a partnering organization.

(c) There shall be exempted from this division a nonprofit organization that facilitates one or more zero-interest, low-cost loans, provided all of the following conditions are met:

(1) The organization is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code¹ and is organized and operated exclusively for one or more of the purposes described in Section 501(c)(3) of the Internal Revenue Code.

- (2) No part of the net earnings of the organization inures to the benefit of a private shareholder or individual.
- (3) A broker's fee is not paid in connection with the making of the loan that is facilitated by the organization.
- (4) An organization wishing to operate pursuant to an exemption granted under this section shall file an application for exemption with the commissioner, in a manner prescribed by the commissioner, and shall pay a fee to the commissioner, in an amount calculated by the commissioner to cover his or her costs to administer this section and Section 22067. The commissioner may refuse to grant an exemption, or to suspend or revoke a previously issued exemption if he or she finds that one or more of the provisions of this section were not met or are not being met by the organization and that denial, suspension, or revocation of the exemption is in the best interests of the public.
- (5) Every organization whose exemption is approved by the commissioner shall file an annual report with the commissioner on or before March 15 of each year, containing relevant information that the commissioner reasonably requires concerning lending facilitated by the organization within the state during the preceding calendar year at all locations at which the organization facilitates lending. The commissioner shall compile the information submitted pursuant to this paragraph for use in preparing the report required by Section 22067.
- (6) Any loan made pursuant to this section shall comply with the following requirements:
- (A) The loan shall be unsecured.
 - (B) Interest shall not be imposed.
 - (C) An administrative fee may be charged in an amount not to exceed the following:
 - (i) Seven percent of the principal amount, exclusive of the administrative fee, or ninety dollars (\$90), whichever is less, on the first loan made to a borrower.
 - (ii) Six percent of the principal amount, exclusive of the administrative fee, or seventy-five dollars (\$75), whichever is less, on the second and subsequent loans made to that borrower.
 - (D) An organization shall not charge the same borrower an administrative fee more than once in any four-month period. Each administrative fee shall be fully earned immediately upon consummation of a loan agreement.
 - (E) Notwithstanding subdivision (a) of Section 22320.5 and in lieu of any other type of delinquency fee or late fee, an organization may require reimbursement from a borrower of up to ten dollars (\$10) to cover an insufficient funds fee

incurred by that organization due to actions of the borrower. An organization shall not charge more than two insufficient funds fees to the same borrower in a single month.

(F) The following information shall be disclosed to the consumer in writing, in a typeface no smaller than 12-point type, at the time of the loan application:

(i) The amount to be borrowed, the total dollar cost of the loan to the consumer if the loan is paid back on time, including the sum of the administrative fee and principal amount borrowed, the corresponding annual percentage rate, calculated in accordance with Federal Reserve Board Regulation Z (12 C.F.R. 226.1), the periodic payment amount, the payment frequency, and the insufficient funds fee, if applicable.

(ii) An explanation of whether, and under what circumstances, a borrower may exit a loan agreement.

(G) The loan shall have a minimum principal amount upon origination of two hundred fifty dollars (\$250) and a maximum principal amount upon origination of two thousand five hundred dollars (\$2,500), and a term of not less than the following:

(i) Ninety days for loans whose principal balance upon origination is less than five hundred dollars (\$500).

(ii) One hundred twenty days for loans whose principal balance upon origination is at least five hundred dollars (\$500), but is less than one thousand five hundred dollars (\$1,500).

(iii) One hundred eighty days for loans whose principal balance upon origination is at least one thousand five hundred dollars (\$1,500).

(H) The loan shall not be refinanced.

(I) The organization or any of its wholly owned subsidiaries shall not sell or assign unpaid debt to an independent party for collection before at least 90 days have passed since the start of the delinquency.

(7) Prior to disbursement of loan proceeds, the organization shall either (A) offer a credit education program or seminar to the borrower that has been previously reviewed and approved by the commissioner for use in complying with this section, or (B) invite the borrower to a credit education program or seminar offered by an independent third party that has been previously reviewed and approved by the commissioner for use in complying with this section. A credit education program or seminar offered pursuant to this paragraph shall be provided at no cost to the borrower.

(8) The organization shall report each borrower's payment performance to at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, upon acceptance as a data furnisher by that consumer reporting agency. For purposes of this section, a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis is one that meets the definition in Section 603(p) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681a(p)). An organization that is accepted as a data furnisher after being granted an exemption by the commissioner pursuant to this subdivision shall report all borrower payment performance since its inception of lending under the program, as soon as practicable after its acceptance into the program, but in no event more than six months after its acceptance into the program.

(9) The organization shall underwrite each loan and shall ensure that a loan is not made if, through its underwriting, the organization determines that the borrower's total monthly debt service payments, at the time of loan origination, including the loan for which the borrower is being considered, and across all outstanding forms of credit that can be independently verified by the organization, exceed 50 percent of the borrower's gross monthly household income except as specified in clause (iii) of subparagraph (D).

(A) The organization shall seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower but not available through independent verification. The organization shall verify that information using a credit report from at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis or through other available electronic debt verification services that provide reliable evidence of a borrower's outstanding debt obligations.

(B) The organization shall also request from the borrower and include all information obtained from the borrower regarding outstanding deferred deposit transactions in the calculation of the borrower's outstanding debt obligations.

(C) The organization shall not be required to consider, for purposes of debt-to-income ratio evaluation, loans from friends or family.

(D) The organization shall also verify the borrower's household income that the organization relies on to determine the borrower's debt-to-income ratio using information from any of the following:

(i) Electronic means or services that provide reliable evidence of the borrower's actual income.

(ii) Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.

(iii) A signed statement from the borrower stating sources and amounts of income, if the borrower's actual income cannot be independently verified using electronic means or services, Internal Revenue Service forms, tax

returns, payroll receipts, bank statements, or other third-party documents. If income is verified using a signed statement from a borrower, a loan shall not be made if the borrower's total monthly debt service payments, at the time of loan origination, including the loan for which the borrower is being considered, and across all outstanding forms of credit, exceed 25 percent of the borrower's gross monthly household income.

(10) The organization shall notify each borrower, at least two days prior to each payment due date, informing the borrower of the amount due and the payment due date. Notification may be provided by any means mutually acceptable to the borrower and the organization. A borrower shall have the right to opt out of this notification at any time, upon electronic or written request to the organization. The organization shall notify each borrower of this right prior to disbursing loan proceeds.

(11) Notwithstanding Sections 22311 to 22315, inclusive, no organization, in connection with, or incidental to, the facilitating of any loan made pursuant to this section, may offer, sell, or require a borrower to contract for "credit insurance" as defined in paragraph (1) of subdivision (a) of Section 22314 or insurance on tangible personal or real property of the type specified in Section 22313.

(12) An organization shall not require, as a condition of making a loan, that a borrower waive any right, penalty, remedy, forum, or procedure provided for in any law applicable to the loan, including the right to file and pursue a civil action or file a complaint with or otherwise communicate with the commissioner or any court or other public entity, or that the borrower agree to resolve disputes in a jurisdiction outside of California or to the application of laws other than those of California, as provided by law. Any waiver by a borrower must be knowing, voluntary, and in writing, and expressly not made a condition of doing business with the organization. Any waiver that is required as a condition of doing business with the organization shall be presumed involuntary, unconscionable, against public policy, and unenforceable. The organization has the burden of proving that a waiver of any rights, penalties, forums, or procedures was knowing, voluntary, and not made a condition of the contract with the borrower.

(13) An organization shall not refuse to do business with or discriminate against a borrower or applicant on the basis that the borrower or applicant refuses to waive any right, penalty, remedy, forum, or procedure, including the right to file and pursue a civil action or complaint with, or otherwise notify, the commissioner or any court or other public entity. The exercise of a person's right to refuse to waive any right, penalty, remedy, forum, or procedure, including a rejection of a contract requiring a waiver, shall not affect any otherwise legal terms of a contract or an agreement.

(14) This section does not apply to any agreement to waive any right, penalty, remedy, forum, or procedure, including any agreement to arbitrate a claim or dispute, after a claim or dispute has arisen. This section does not affect the enforceability or validity of any other provision of the contract.

(d) This division does not apply to a nonprofit organization that partners with an organization granted an exemption pursuant to subdivision (c) for the purpose of facilitating zero-interest, low-cost loans, provided that the requirements of paragraphs (6) to (14), inclusive, of subdivision (c), and the following additional conditions are met:

(1) The partnership of each exempt organization and each partnering organization shall be formalized through a written agreement that specifies the obligations of each party. Each written agreement shall contain a provision establishing that the partnering organization agrees to comply with the provisions of this section and any regulations that may be adopted by the commissioner pursuant to this section. Each written agreement shall be provided to the commissioner upon request.

(2) Each partnering organization shall meet the requirements for federal income tax exemption under Section 501(c)(3) of the Internal Revenue Code and shall be organized and operated exclusively for one or more of the purposes described in Section 501(c)(3) of the Internal Revenue Code.

(3) No part of the net earnings of the partnering organization shall inure to the benefit of a private shareholder or individual.

(4) Each exempt organization shall notify the commissioner within 30 days of entering into a written agreement with a partnering organization, on such form and in such manner as the commissioner may prescribe. At a minimum, this notification shall include the name of the partnering organization, the contact information for a person responsible for the lending activities facilitated by that partnering organization, and the address or addresses at which the organization facilitates lending activities.

(5) Upon a determination that a partnering organization has acted in violation of this section or any regulation adopted thereunder, the commissioner may disqualify that partnering organization from performing services under this section, bar that organization from performing services at one or more specific locations of that organization, terminate a written agreement between a partnering organization and an exempt organization, and, if the commissioner deems such action to be in the public interest, prohibit the use of that partnering organization by all organizations granted exemptions by the commissioner pursuant to subdivision (c).

(6) The exempt organization shall include information regarding the loans facilitated by the partnering organization in the annual report required pursuant to paragraph (5) of subdivision (c).

(e) The commissioner may examine each exempt organization and each partnering organization for compliance with the provisions of this section, upon reasonable notice to the party responsible for the lending activities facilitated by that organization. An organization so examined shall make available to the commissioner or his or her representative all books and records requested by the commissioner related to the lending activities facilitated by that organization. The cost of the examination shall be paid by the exempt organization.

(f) This section does not apply to any loan of a bona fide principal amount of two thousand five hundred dollars (\$2,500) or more as determined in accordance with Section 22251. For purposes of this subdivision, "bona fide principal amount" shall be determined in accordance with Section 22251.

Credits

(Added by Stats.2014, c. 190 (S.B.896), § 1, eff. Jan. 1, 2015. Amended by Stats.2015, c. 303 (A.B.731), § 156, eff. Jan. 1, 2016.)

§ 22067. Publication of report by commissioner

(a) On or before July 1 of each year, the commissioner shall post a report on the department's Internet Web site summarizing the information described in subdivision (b). The information disclosed to the commissioner for the commissioner's use in preparing the report described in this section is exempted from any requirement of public disclosure by paragraph (2) of subdivision (d) of Section 6254 of the Government Code.

(b) The report required by this section shall specify the time period to which the report corresponds, and shall include, but not be limited to, the following for that time period:

(1) The number of organizations that applied for exemptions pursuant to subdivision (c) of Section 22066, and the number of organizations that entered into partnerships with exempt organizations in accordance with subdivision (d) of Section 22066.

(2) The number of organizations granted exemptions and the types of exemptions granted.

(3) The reason or reasons for denying applications for exemptions, if applicable. This information shall be provided in a manner that does not identify the entity or entities denied.

(4) The number of borrowers who applied for loans through exempt or partnering organizations, the number of borrowers granted loans facilitated by exempt or partnering organizations, the total amount loaned, and the distribution of loan lengths upon origination.

(5) The number of borrowers who obtained more than one loan through an exempt or partnering organization and the distribution of the number of loans per borrower.

(6) Of the number of borrowers who obtained more than one loan facilitated by an exempt or a partnering organization, the percentage of those borrowers whose credit scores increased between successive loans, based on information from at least one major credit bureau, and the average size of the increase.

(7) The income distribution of borrowers upon loan origination, including the number of borrowers who obtained at least one loan and who resided in a low-to-moderate-income census tract at the time of their loan application.

(8) The number of borrowers who obtained loans facilitated by an exempt or a partnering organization for the following purposes, based on borrower responses at the time of their loan applications indicating the primary purpose for which the loan was obtained:

(A) Medical.

(B) Other emergency.

(C) Vehicle repair.

(D) Vehicle purchase.

(E) To pay bills.

(F) To consolidate debt.

(G) To build or repair credit history.

(H) To finance a purchase of goods or services other than a vehicle.

(I) For other than personal, family, or household purposes.

(J) Other.

(9) The number of borrowers who self-report that they had a bank account at the time of their loan application, the number of borrowers who self-report that they had a bank account and used check-cashing services, and the number of borrowers who self-report that they did not have a bank account at the time of their loan application.

(10) The performance of loans under Section 22066, as reflected by all of the following:

(A) The number and percentage of borrowers who experienced at least one late payment lasting between 7 and 29 days and who subsequently brought his or her loan current, and the distribution of principal loan amounts corresponding to those late payments.

(B) The number and percentage of borrowers who experienced at least one late payment lasting between 30 and 59 days and who subsequently brought his or her loan current, and the distribution of principal loan amounts corresponding to those late payments.

(C) The number and percentage of borrowers who experienced at least one late payment lasting 60 days or more and who subsequently brought his or her loan current, and the distribution of principal loan amounts corresponding to those late payments.

(D) The number and percentage of borrowers who experienced at least one late payment of greater than seven days and who did not subsequently bring his or her loan current.

(E) Among loans that were ever late for seven days or more, the average number of times borrowers experienced a late payment of seven days or more.

(11) The number and types of violations of Section 22066 by exempt organizations, which were documented by the commissioner.

(12) The number and types of violations of Section 22066 by partnering organizations, which were documented by the commissioner.

(13) The number of times the commissioner suspended or revoked an exemption granted to an exempt organization pursuant to paragraph (4) of subdivision (c) of Section 22066 and the number of times a partnering organization was sanctioned by the commissioner pursuant to paragraph (5) of subdivision (d) of Section 22066.

(14) The number of complaints received by the commissioner about an exempt organization or a partnering organization, and the nature of those complaints.

(15) Recommendations, if any, for improving the program.

Credits

(Added by Stats.2014, c. 190 (S.B.896), § 2, eff. Jan. 1, 2015.)

§ 22068. Applicability of exemptions and exclusions

(a) The exemptions and exclusions in this article are not applicable to a person engaged in business as a program administrator or a PACE solicitor.

(b) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 19, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22100. Finance lender or broker license required; making or brokering residential mortgage loans; registration with Nationwide Mortgage Licensing System and Registry; mortgage loan originator license

- (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.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995. Amended by Stats.2009, c. 160 (S.B.36), § 12, eff. Oct. 11, 2009; Stats.2012, c. 264 (A.B.2666), § 4.)

§ 22100.5. License requirement for program administrators

(a) A person shall not engage in the business of a program administrator without obtaining a license from the commissioner.

(b) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 20, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22101. Application for license as finance lender, broker, or program administrator; criminal history record check; finance lenders engaged in business through subsidiary corporation

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

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

(c) This section does not prevent a licensee from engaging in the business of a finance lender or program administrator through a subsidiary corporation if the subsidiary corporation is licensed pursuant to this division.

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

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

(g) Notwithstanding any other law, the commissioner may by rule or order prescribe circumstances under which to accept electronic records or electronic signatures. This section does not require the commissioner to accept electronic records or electronic signatures.

(h) For purposes of this section, the following terms have the following meanings:

(1) “Electronic record” means an initial license application, or material modification of that license application, and any other record created, generated, sent, communicated, received, or stored by electronic means. “Electronic records” also includes, but is not limited to, all of the following:

(A) An application, amendment, supplement, and exhibit, filed for any license, consent, or other authority.

(B) A financial statement, a report, or advertising.

(C) An order, license, consent, or other authority.

(D) A notice of public hearing, accusation, and statement of issues in connection with any application, license, consent, or other authority.

(E) A proposed decision of a hearing officer and a decision of the commissioner.

(F) The transcripts of a hearing and correspondence between a party and the commissioner directly relating to the record.

(G) A release, newsletter, interpretive opinion, determination, or specific ruling.

(H) Correspondence between a party and the commissioner directly relating to any document listed in subparagraphs (A) to (G), inclusive.

(2) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(i) The Legislature finds and declares that the Department of Business Oversight has continuously implemented methods to accept records filed electronically, and is encouraged to continue to expand its use of electronic filings to the extent feasible, as budget, resources, and equipment are made available to accomplish that goal.

(j) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 22, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22101.5. Processing of fingerprint images and related information from applicants in state and federal criminal background checks

(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, broker, or program

administrator 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.

(g) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 24, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22102. Licensees seeking to engage in business at new location; application form; timing and conditions; approval or denial

(a) A finance lender, broker, or program administrator 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.

(g) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 26, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22103. Application and investigation fees

(a) At the time of filing the application for a finance lender, broker, program administrator, 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.

(b) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 28, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22104. Financial statements; minimum net worth; rules and regulations

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

(b) A licensed finance lender or broker, that employs one or more mortgage loan originators and that makes residential mortgage loans, shall continuously maintain a minimum net worth of at least two hundred fifty thousand dollars (\$250,000).

(c) A licensed finance broker, that employs one or more mortgage loan originators and that arranges, but does not make, residential mortgage loans, shall continuously maintain a minimum net worth of at least fifty thousand dollars (\$50,000).

(d) 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.

(e) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 30, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22105. Investigation of applicant and interested parties; issuance and delivery of license

(a) Upon the filing of an application pursuant to Section 22101 and the payment of the fees, the commissioner shall investigate the applicant and its general partners and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or any person responsible for the conduct of the applicant's lending or program administration activities in this state, if the applicant is a partnership. If the applicant is a corporation, trust, limited liability company, or association, including an unincorporated organization, the commissioner shall investigate the applicant, its principal officers, directors, managing members, and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding equity securities or any person responsible for the conduct of the applicant's lending activities or for administering PACE programs for the applicant in this state. Upon the filing of an application pursuant to Section 22102 and the payment of the fees, the commissioner shall investigate the person responsible for the lending activity of the licensee, or for administering one or more PACE programs for the licensee, at the new location described in the application. The investigation may be limited to information that was not included in prior applications filed pursuant to this division. If the commissioner determines that the applicant has satisfied this division and does not find facts constituting reasons for denial under Section 22109, the commissioner shall issue and deliver a license to the applicant.

(b) For the purposes of this section, "principal officers" shall mean president, chief executive officer, treasurer, and chief financial officer, as may be applicable, and any other officer with direct responsibility for the conduct of the applicant's lending activities or for PACE program administration for the applicant within the state.

(c) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 32, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

Amended by Stats.2018, c. 798 (S.B.1087), § 1, eff. Jan. 1, 2019; Stats.2018, c. 813 (A.B.2063), § 3, eff. Jan. 1, 2019.)

§ 22105.1. Applications for mortgage loan originator license; inclusions; criminal history background check

(a) An applicant for a mortgage loan originator license shall apply by submitting the uniform form prescribed for such 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 Business Oversight 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) 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.

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

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

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

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

Credits

(Added by Stats.2009, c. 160 (S.B.36), § 18, eff. Oct. 11, 2009. Amended by Stats.2015, c. 190 (A.B.1517), § 43, eff. Jan. 1, 2016.)

§ 22105.2. Establishing relationships or contract with the Nationwide Mortgage Licensing System and Registry; establishment of process to challenge information entered into registry

(a) The commissioner is authorized to 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 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.

Credits

(Added by Stats.2009, c. 160 (S.B.36), § 19, eff. Oct. 11, 2009.)

§ 22105.3. Privacy or confidentiality of information provided to the Nationwide Mortgage Licensing System and Registry

(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 applicable 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.

(c) 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 the person, that privilege.

(3) 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.

(d) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 34, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22105.4. Reporting of violations and enforcement actions

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

Credits

(Added by Stats.2009, c. 160 (S.B.36), § 21, eff. Oct. 11, 2009.)

§ 22106. Information stated on license; out-of-state locations

(a) The finance lender, broker, or program administrator license shall state the name of the licensee, and if the licensee is a partnership, the names of its general partners, and if a corporation or an association, the date and place of its incorporation or organization, and the address of the licensee's principal business location. On the approval and licensing of a location pursuant to Section 22101 or 22102, the commissioner shall issue an original license endorsed to

show the address of the authorized location and, if applicable, the name of the subsidiary corporation licensed to operate the location. The license shall state whether the licensee is licensed as a finance lender, broker, or program administrator.

(b)(1) An application for a license for a business location outside this state shall constitute an agreement by the applicant to do all of the following:

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

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

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

(c) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 36, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22107. Costs and expenses of administering division; assessments; penalties; payment of assessment through Nationwide Mortgage Licensing System and Registry

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

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

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

(d) If a licensee fails to pay the assessment on or before the October 31st, the commissioner may by order summarily suspend or revoke the certificate issued to the licensee. If, after an order is made, a request for a hearing is filed in writing within 30 days, and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a finance lender, broker, or program administrator licensee and any mortgage loan originator licensee employed by the finance lender or broker shall not conduct business pursuant to this division except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided in this division.

(e) 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.

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

(g) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 38, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22108. Change in application information; filing requirements

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

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

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995. Amended by Stats.2009, c. 160 (S.B.36), § 23.5, eff. Oct. 11, 2009.)

§ 22109. Denial of application; grounds; notice and opportunity to be heard

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

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

(2) The applicant or an officer, director, general partner, person responsible for the applicant's lending activities or administering PACE programs for the applicant in this state, or person owning or controlling, directly or indirectly, 10 percent or more of the

outstanding interests or equity securities of the applicant has, within the last 10 years, been convicted of or pleaded nolo contendere to a crime, or committed an act involving dishonesty, fraud, or deceit, if the crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this division.

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

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

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

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

(d) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 40, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22109.1. Denial of application for mortgage loan originator license; minimum findings; proceedings and powers of commissioner

(a) The commissioner shall deny an application for a mortgage loan originator license unless the commissioner makes, at a minimum, the following findings:

(1) 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.

(2)(A) 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 the felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.

(B) For purposes of this paragraph, an expunged or pardoned felony conviction shall not require denial of an application. However, the commissioner may consider the underlying crime, facts, or circumstances of an expunged or pardoned felony conviction when determining the eligibility of an applicant for licensure under this paragraph or paragraph (3).

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

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

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

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

(b) Before denying a license under this section, the commissioner 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 shall have all the powers granted under that chapter.

Credits

(Added by Stats.2009, c. 160 (S.B.36), § 25, eff. Oct. 11, 2009. Amended by Stats.2010, c. 287 (S.B.1137), § 8; Stats.2011, c. 444 (S.B.217), § 3.)

§ 22109.2. Applicants for mortgage loan originator license; prelicensing education courses; hours

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

(1) Three hours of instruction on 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.

(4) Two hours of training related to relevant California law and regulations.

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

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

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

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

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

Credits

(Added by Stats.2009, c. 160 (S.B.36), § 26, eff. Oct. 11, 2009. Amended by Stats.2014, c. 123 (S.B.1459), § 1, eff. Jan. 1, 2015.)

§ 22109.3. Applicant for mortgage loan originator license; qualified written test

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

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

(1) Ethics.

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

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

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

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the

applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

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

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

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

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

Credits

(Added by Stats.2009, c. 160 (S.B.36), § 27, eff. Oct. 11, 2009. Amended by Stats.2014, c. 123 (S.B.1459), § 2, eff. Jan. 1, 2015.)

§ 22109.4. Mortgage loan originators; compliance with license renewal requirements; license expiration and reinstatement

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

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

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

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

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

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

Credits

(Added by Stats.2009, c. 160 (S.B.36), § 28, eff. Oct. 11, 2009. Amended by Stats.2010, c. 287 (S.B.1137), § 9.)

§ 22109.5. Licensed mortgage loan originator; continuing education requirements

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

- (1) Three hours of instruction on federal law and regulations.
- (2) Two 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.
- (4) One hour of training related to relevant California law and regulations.

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

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

(d) Continuing education may be offered in a classroom, online, and 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 22109.4 may correct any deficiency in continuing education as established by rule or regulation of the commissioner.

Credits

(Added by Stats.2009, c. 160 (S.B.36), § 29, eff. Oct. 11, 2009. Amended by Stats.2014, c. 123 (S.B.1459), § 3, eff. Jan. 1, 2015.)

§ 22109.6. Mortgage loan originators; duties of the commissioner; requirements

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

(a) Background information for the following:

(1) Criminal history through fingerprint or other databases.

(2) Civil or administrative records.

(3) Credit history.

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

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

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

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

Credits

(Added by Stats.2009, c. 160 (S.B.36), § 30, eff. Oct. 11, 2009.)

§ 22110. Proceedings; denial of license

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

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22111. Deposit of money paid or collected under division

All money paid or collected under this division shall be deposited in the State Treasury to the credit of the State Corporations Fund. The administration of this division shall be supported out of the State Corporations Fund.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22112. Surety bond

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

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

(c) The commissioner may by rule require a higher bond amount for a licensee who employs one or more mortgage loan originators and who makes or arranges residential mortgage loans, based on the dollar amount of residential mortgage loans originated by that licensee and any mortgage loan originators employed by that licensee. Every mortgage loan originator employed by the licensee shall be covered by the surety bond.

Credits

(Added by Stats.1995, c. 692 (S.B.912), § 1. Amended by Stats.2007, c. 101 (S.B.998), § 21; Stats.2009, c. 160 (S.B.36), § 30.5, eff. Oct. 11, 2009; Stats.2010, c. 287 (S.B.1137), § 10.)

§ 22150. Commissioner's authority

The commissioner may make general rules and regulations and specific rulings, demands, and findings for the enforcement of this division, in addition to, and within the general purposes of, this division.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22151. Posting of license; transfer or assignment of license

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

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

(c) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 42, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22152. Single place of business

(a) A finance lender, broker, or program administrator licensee shall maintain only one place of business under a duplicate or original license issued pursuant to Section 22101 or 22102. The commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this division governing an original issuance of a license.

(b) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 44, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22153. Change of business location; engaging in business at new location; notice; penalty for failure to comply

(a) If a finance lender, broker, or program administrator licensee seeks to change its place of business to a street address other than that designated in its license, the licensee shall provide notice to the commissioner at least 10 days before the change. The commissioner shall notify the licensee within 10 days if the commissioner disapproves the change, and if the commissioner does not notify the licensee of disapproval within 10 days, the change in address shall be deemed approved. The commissioner may require an applicant to submit its application to change its place of business through the Nationwide Mortgage Licensing System and Registry.

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

(c) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 46, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22154. Business conducted at location where other business is conducted; authorized offer or sale of products or services of affiliated corporation; definitions

(a) A licensee shall not conduct the business of making loans or administering a PACE program under this division within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as is authorized in writing by the commissioner upon the commissioner's finding that the character of the other business is such that the granting of the authority would not facilitate evasions of this division or of the rules and regulations made pursuant to this division. An authorization, once granted, remains in effect until revoked by the commissioner. The commissioner may authorize the other business through the Nationwide Mortgage Licensing System and Registry.

(b) The products or services of an affiliated corporation of the licensee that is a supervised financial institution, or a parent or subsidiary of a supervised financial institution that is an affiliate of the licensee, may be provided, offered, or sold at the licensed location of the licensee without authorization by the commissioner pursuant to subdivision (a) if both of the following are met:

- (1) The activity is not prohibited by, or in violation of, the laws applicable to the affiliate or supervised financial institution.
- (2) The products and services are not offered and sold in a manner that restricts the ability of the borrower or customer to individually select or reject a product or service that is offered.

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

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

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

(d) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 48, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22155. Transaction of business under name or at location not named in license; authorization; exceptions

(a) A finance lender, broker, mortgage loan originator, or program administrator licensee shall not transact the business licensed or make any loan or administer any PACE program provided for by this division under any other name or at any other place of business than that named in the license except pursuant to a currently effective written order of the commissioner authorizing the other name or other place of business. The commissioner’s order, while effective, shall be deemed to amend the original license issued pursuant to Section 22105 or 22109.1.

Notwithstanding any provision of this section, a finance lender, program administrator, broker, or mortgage loan originator licensee may make any loan and engage in any other business provided for by this division, other than the business described in subdivision (b) of Section 22154, at a place other than the licensed location under either of the following conditions:

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

(2) The licensee makes a solicitation or advertises for, or makes an offer of, a loan or assessment contract displayed on “home pages” or similar methods by the licensee on the Internet, the World Wide Web, or similar proprietary or common carrier electronic systems, and the prospective borrower or property owner may transmit information over these electronic systems to the licensee in connection with the licensee’s offer to make a loan or assessment contract.

(b) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 50, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22156. Business records and accounts

(a) Finance lender, broker, program administrator, and mortgage loan originator licensees shall keep and use in their business, books, accounts, and records which will enable the commissioner to determine if the licensee is complying with the provisions of this division and with the rules and regulations made by the commissioner. On any loan secured by real property in which loan proceeds were disbursed to an independent escrowholder, the licensee shall retain records and documents as set forth by rules of the commissioner adopted pursuant to Section 22150. Upon request of the commissioner, licensees shall file an authorization for disclosure to the commissioner of financial records of the licensed business pursuant to Section 7473 of the Government Code.

(b) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 52, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22157. Retention period for records and accounts

(a) Finance lender, broker, and mortgage loan originator licensees shall preserve their books, accounts, and records, if any, for at least three years after making the final entry on any loan recorded therein.

(b) Except as otherwise specified by applicable law, including paragraph (3) of subdivision (b) of Section 5913 of the Streets and Highways Code, program administrator licensees shall preserve their books, accounts, and records for at least three years after the extinguishment of a PACE assessment is recorded therein.

(c) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 54, eff. Oct. 4, 2017, operative Jan. 1, 2019.
Amended by Stats.2018, c. 813 (A.B.2063), § 4, eff. Jan. 1, 2019.)

§ 22158. Maintenance or preservation of original records

Nothing contained in Sections 22156 and 22157 shall require the maintenance or preservation of original records, provided that any information requested by the commissioner can be furnished within 48 hours, excluding Saturdays, Sundays, and holidays as defined in Sections 6700 and 6701 of the Government Code.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22159. Annual reports; public inspection; special reports

- (a) Each finance lender, broker, and program administrator licensee shall file an annual report with the commissioner, on or before March 15th, giving the relevant information that the commissioner reasonably requires concerning the business and operations conducted by the licensee or authorized by the program administrator licensee within the state during the preceding calendar year for each licensed place of business. The individual annual reports filed pursuant to this section shall be made available to the public for inspection except, upon request in the annual report to the commissioner, the balance sheet contained in the annual report of a sole proprietor or any other nonpublicly traded person. "Nonpublicly traded person" for purposes of this section means persons with securities owned by 35 or fewer individuals. The report shall be made under oath and in the form prescribed by the commissioner.
- (b) A licensee shall make other special reports that may be required by the commissioner.
- (c) The commissioner may require a licensee that employs one or more mortgage loan originators to submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in the form and shall contain the information as the Nationwide Mortgage Licensing System and Registry may require.
- (d) The commissioner may by rule or order require a mortgage loan originator to submit reports of condition to the Nationwide Mortgage Licensing System and Registry, in lieu of the reports of condition required of his or her employer pursuant to subdivision (c).
- (e) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 56, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22159.5. Residential mortgage loan servicing activities; reporting requirements; posting of aggregated survey results on department Web site

- (a) The commissioner may, as he or she deems necessary, require licensees to provide reports concerning their residential mortgage loan servicing activities, including, but not limited to, information similar to that collected in connection with the Mortgage Servicers Survey, first published by the Department of Business Oversight in December 2007. The commissioner is additionally authorized to seek and accept information provided on a voluntary basis by residential mortgage loan servicers not subject to the commissioner's jurisdiction. The commissioner shall post only aggregated survey results on the department's Internet Web site, and shall note the number of loan servicers submitting data included in the aggregated totals and the estimated percentage of outstanding mortgage loans to Californians that are serviced by these loan servicers, to the extent information on the number of outstanding loans is available from a reliable source. Nothing in this section is intended to reduce or change the commissioner's authority to request and demand reports under Sections 22150 and 22159.

(b) For purposes of this section, “mortgage loan servicing activity” 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 relating to that receipt or the enforcement of its receipt, on behalf of the holder of the note evidencing that loan.

Credits

(Added by Stats.2008, c. 277 (A.B.69), § 1. Amended by Stats.2015, c. 190 (A.B.1517), § 44, eff. Jan. 1, 2016.)

§ 22160. Composite report by commissioner

The commissioner shall make and file annually with the Department of Business Oversight as a public record a composite of the annual reports and any comments on the reports that he or she deems to be in the public interest.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995. Amended by Stats.2015, c. 190 (A.B.1517), § 45, eff. Jan. 1, 2016.)

§ 22161. Fraudulent or misleading conduct or statements

(a) A person subject to this division shall not do any of the following:

- (1) Make a materially false or misleading statement or representation to a borrower about the terms or conditions of that borrower’s loan, when making or brokering the loan.
- (2) Make a materially false or misleading statement or representation to a property owner about the terms or conditions of an assessment contract.
- (3) Advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner, any statement or representation with regard to the business subject to the provisions of this division, including the rates, terms, or conditions for making or negotiating loans, or for making or negotiating assessment contracts, that is false, misleading, or deceptive, or that omits material information that is necessary to make the statements not false, misleading, or deceptive, or in the case of a licensee, that refers to the supervision of the business by the state or any department or official of the state.
- (4) Commit an act in violation of Section 1695.13 of the Civil Code.
- (5) Engage in any act in violation of Section 17200 of the Business and Professions Code.
- (6) Knowingly misrepresent, circumvent, or conceal, through subterfuge or device, any material aspect or information regarding a transaction to which the person is a party.
- (7) Commit an act that constitutes fraud or dishonest dealings.

(b) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 58, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22162. Statement of license included in advertisement

(a) A finance lender, broker, or mortgage loan originator licensee shall not place an advertisement disseminated primarily in this state for a loan unless the licensee discloses in the printed text of the advertisement, or in the oral text in the case of a radio or television advertisement, the license under which the loan would be made or arranged.

(b) A program administrator licensee shall not place an advertisement disseminated primarily in this state for an assessment contract unless the licensee discloses in the printed text of the advertisement, or in the oral text in the case of a radio or television advertisement, the license under which the assessment contract would be administered.

(c) This section shall become operative on January 1, 2019.

§ 22163. Statement of rates of charge

(a) The commissioner may require that rates of charge, if stated by a licensee, be stated fully and clearly in the manner that the commissioner deems necessary to prevent misunderstanding by prospective borrowers or property owners.

(b) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 62, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22164. Interest rates, charges, or loan costs; statements to provide adequate information

(a) If any person engaged in the business regulated by this division refers in any advertising to rates of interest, charges, or cost of loans or assessment contracts, the commissioner shall require that the rates, charges, or costs are stated fully and clearly in the manner that he or she deems necessary to give adequate information to prospective borrowers or property owners. If the rates or costs advertised do not apply to loans or assessment contracts of all classes made or negotiated by the person, this fact shall be clearly indicated in the advertisement.

(b) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 64, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22165. Disapproved advertising copy; submission of advertising copy for review prior to use

No advertising copy shall be used after its use has been disapproved by the commissioner and the licensee is notified in writing of the disapproval. The commissioner may by order direct any licensee to submit advertising copy to the commissioner for review prior to use.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995. Amended by Stats.2010, c. 640 (S.B.1146), § 1.)

§ 22166. File of advertising copy

The commissioner may require licensees to maintain a file of all advertising copy for a period of two years from the date of its use. The file shall be available to the commissioner upon request.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995. Amended by Stats.2010, c. 640 (S.B.1146), § 2.)

§ 22167. Licensed finance lenders acting as brokers

A licensed finance lender may act as a broker as defined in Section 22004 at its licensed place of business without obtaining an additional license as a broker under this division provided the licensee has notified the commissioner of the action in writing.

Credits

(Added by Stats.1994, c. 1115 (A.B.2885), § 2, operative July 1, 1995.)

§ 22168. Misleading the public regarding qualifications or experience; suspension or bar from employment; notice; hearing

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

(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 shall be set for hearing to commence within 30 days after 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 the 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 subdivision (a), the person who is the subject of the proposed order is immediately prohibited from engaging in any activities subject to licensure under this division.

(d) Persons suspended or barred under this section are prohibited from participating in any business activity of a licensed finance lender, broker, program administrator, or mortgage loan originator, and from engaging in any business activity on the premises where a licensed finance lender, broker, program administrator, or mortgage loan originator is conducting its business. This subdivision does not prohibit suspended or barred persons from having their personal transactions processed by a licensed finance lender, broker, mortgage loan originator, or program administrator.

(e) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 66, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22169. Prohibiting participation in any business activity of finance lender; suspended, convicted or barred because of unlawful actions

(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 a person, including a mortgage loan originator, from any position of employment with, or management or control of, any finance lender, broker, program administrator, 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, program administrator, 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) or (b), the person may request a hearing under the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) of Part 1 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, program administrator, or mortgage loan originator, and from engaging in any business activity on the premises where a finance lender, broker, program administrator, or mortgage loan originator is conducting business.

(e) This section shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 68, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22680. Establishment and maintenance of process for enrolling PACE solicitors and solicitor agents; standards for enrollment

(a) A person shall not engage in the business of a PACE solicitor unless that person is enrolled with a program administrator pursuant to the requirements of this section.

(b) A program administrator shall establish and maintain a process for enrolling PACE solicitors that is acceptable to the commissioner. That process shall include both of the following:

(1) A written agreement between the program administrator and the PACE solicitor that shall set forth the obligations of the PACE solicitor and its PACE solicitor agents.

(2) A review of readily and publicly available information regarding each PACE solicitor.

(c) A program administrator shall establish and maintain a process for enrolling PACE solicitor agents that is acceptable to the commissioner. That process shall include a background check of each PACE solicitor agent. A program administrator may rely on a background check conducted by the Contractors' State License Board to comply with this requirement.

(d) A program administrator shall not enroll a PACE solicitor or a PACE solicitor agent that does not satisfy at least one of the following criteria:

(1) Maintain in good standing a license from the Contractors' State License Board.

(2) Maintain a registration in good standing with the Contractors' State License Board as a home improvement salesperson.

(3) Be exempt from, or not subject to, licensure or registration under the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code).

(e) A program administrator shall not enroll a PACE solicitor if, as a result of the review conducted as part of the program administrator's enrollment process, the program administrator finds any of the following:

- (1) A clear pattern of consumer complaints about the PACE solicitor regarding dishonesty, misrepresentations, or omissions.
- (2) A high likelihood that the PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law.
- (3) A clear pattern on the part of the PACE solicitor of failing to timely receive and respond to property owner complaints regarding the PACE solicitor.

(f) A program administrator shall establish and maintain a process to promote and evaluate the compliance of PACE solicitors and PACE solicitor agents with the requirements of applicable law that is acceptable to the commissioner. That process shall include all of the following, at a minimum:

- (1) A risk-based, commercially reasonable procedure to monitor and test the compliance of PACE solicitors and PACE solicitor agents with the requirements of subdivision (a) of Section 22689.
- (2) A procedure to regularly monitor the license or registration status of PACE solicitors and PACE solicitor agents.
- (3) A periodic review of the solicitation activities of PACE solicitors enrolled with the program administrator, to be conducted at least once every two years.

(g) A program administrator shall establish and implement a process, which is acceptable to the commissioner, for canceling the enrollment of PACE solicitors and PACE solicitor agents who fail to maintain the minimum qualifications required by this section, or who violate any provision of this division.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 71, eff. Oct. 4, 2017, operative Jan. 1, 2019.

Amended by Stats.2018, c. 798 (S.B.1087), § 2, eff. Jan. 1, 2019; Stats.2018, c. 813 (A.B.2063), § 5, eff. Jan. 1, 2019.)

§ 22681. Establishment and maintenance of training program for PACE solicitor agents; introductory training and additional education

(a) A program administrator shall establish and maintain a training program for PACE solicitor agents that is acceptable to the commissioner.

(b) A program administrator shall require each PACE solicitor agent to complete an introductory training that addresses the topics listed in subdivision (c) as part of the program administrator's enrollment process for PACE solicitor agents. The introductory training shall require that the

PACE solicitor agent pass a test that measures the PACE solicitor agent's knowledge and comprehension of the training material. The introductory training shall not be subject to any minimum duration requirements.

(c) In addition to the introductory training, a program administrator shall require that each PACE solicitor agent complete six hours of education provided by the program administrator within three months of completing the program administrator's enrollment process. The training shall include the following topics:

- (1) PACE programs and assessment contracts.
- (2) PACE disclosures.
- (3) Ethics.
- (4) Fraud prevention.
- (5) Consumer protection.
- (6) Nondiscrimination.
- (7) Senior financial abuse.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 71, eff. Oct. 4, 2017, operative Jan. 1, 2019. Amended by Stats.2018, c. 92 (S.B.1289), § 68, eff. Jan. 1, 2019; Stats.2018, c. 798 (S.B.1087), § 3, eff. Jan. 1, 2019; Stats.2018, c. 813 (A.B.2063), § 6, eff. Jan. 1, 2019.)

§ 22682. Notification of commissioner for each PACE solicitor and PACE solicitor agent enrolled; enrollment cancellation and withdrawal

(a) A program administrator shall, in the manner prescribed by the commissioner, timely notify the commissioner of each PACE solicitor and PACE solicitor agent enrolled by the program administrator.

(b) A program administrator shall, in the manner prescribed by the commissioner, timely notify the commissioner of each enrollment cancellation and withdrawal of a PACE solicitor or a PACE solicitor agent pursuant to subdivision (g) of Section 22680.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 71, eff. Oct. 4, 2017, operative Jan. 1, 2019. Amended by Stats.2018, c. 798 (S.B.1087), § 4, eff. Jan. 1, 2019; Stats.2018, c. 813 (A.B.2063), § 7, eff. Jan. 1, 2019.)

§ 22683. Policies and procedures for responding to questions and addressing complaints

A program administrator shall develop and implement policies and procedures for responding to questions and addressing complaints as soon as reasonably practicable.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 71, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22684. Criteria for execution of assessment contract

A program administrator shall not execute an assessment contract, and no work shall commence under a home improvement contract that is financed by that assessment contract nor shall that home improvement contract be executed unless the following criteria are satisfied:

- (a) All property taxes for the property that will be subject to the assessment contract are current. The program administrator shall ask a property owner whether there has been no more than one late payment of property taxes on the property for the previous three years or since the current owner acquired the property, whichever period is shorter.
- (b) The property that will be subject to the assessment contract has no recorded and outstanding involuntary liens in excess of one thousand dollars (\$1,000).
- (c) The property that will be subject to the assessment contract has no notices of default currently recorded that have not been rescinded.
- (d) The property owner has not been a party to any bankruptcy proceedings within the last four years, except that the property owner may have been party to a bankruptcy proceeding that was discharged or dismissed between two and four years before the application date and the property owner has had no payments more than 30 days past due on any mortgage debt or nonmortgage debt, excluding medical debt, during the 12 months immediately preceding the application date.
- (e) The property owner is current on all mortgage debt on the subject property and has no more than one late payment during the six months immediately preceding the application date and if the late payment did not exceed 30 days past due.
- (f) The property that will be subject to the assessment contract is within the geographical boundaries of the applicable PACE program.
- (g) The measures to be installed pursuant to the assessment contract are eligible under the terms of the applicable PACE program.
- (h) The financing is for less than 15 percent of the value of the property, up to the first seven hundred thousand dollars (\$700,000) inclusive of the existing assessments, and is for less than 10 percent of the remaining value of the property above seven hundred thousand dollars (\$700,000).

(i) The total PACE assessments and the mortgage-related debt on the property subject to the PACE assessment will not exceed 97 percent of the market value of the property as established by the valuation required by Section 22685.

(j) The term of the assessment contract shall not exceed the estimated useful life of the measure to which the greatest portion of funds disbursed under the assessment contract is attributable. The program administrator shall determine useful life for purposes of this subdivision based upon credible third-party standards or certification criteria that have been established by appropriate government agencies or nationally recognized standards and testing organizations.

(k) The program administrator shall verify the existence of recorded PACE assessments and shall ask if the property owner has authorized additional PACE assessments on the same subject property that have not yet been recorded. The failure of a property owner to comply with this subdivision shall not invalidate an assessment contract or any obligations thereunder, notwithstanding if the combined amount of the PACE assessments exceed the criteria set forth in subdivision (h) or (i). The existence of a prior PACE assessment or a prior assessment contract shall not constitute evidence that the assessment contract under consideration is affordable or meets any other program requirements.

(l) The program administrator shall use commercially reasonable and available methods to verify the above.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 71, eff. Oct. 4, 2017, operative Jan. 1, 2018.

Amended by Stats.2018, c. 798 (S.B.1087), § 5, eff. Jan. 1, 2019; Stats.2018, c. 813 (A.B.2063), § 8, eff. Jan. 1, 2019.)

§ 22685. Methods to derive market value; disclosure

(a) A program administrator shall derive market value using one of the following:

(1) Automated valuation models, using the following criteria:

(A) Each automated valuation model must be provided by a third-party vendor.

(B) Each automated valuation model must have estimation models with confidence scores and regular statistical calibration by the third-party vendor.

(C) The program administrator shall utilize at least three automated valuation models for each property. The estimated value for each model shall be the average between the high and low values, if a range is provided.

(D) The program administrator shall utilize the estimated value with the highest confidence score for a property. If an automated valuation model meeting the criteria of subparagraphs (A), (B), and (C) does not obtain a confidence score for a subject property, the PACE program shall utilize the average of all estimated values.

(2) An appraisal conducted within six months of the application date by a state-licensed or state-certified real estate appraiser licensed pursuant to Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code. A program administrator may rely upon an appraisal obtained from a property owner if that appraisal was conducted in accordance with applicable laws and regulations by a state-licensed or state-certified appraiser in connection with a consumer credit transaction secured by the subject property, including the purchase or refinance of the subject property or the extension of an equity line of credit secured by the subject property.

(b) The market value determination by the program administrator shall be disclosed to the property owner prior to signing the assessment contract.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 71, eff. Oct. 4, 2017, operative Jan. 1, 2018. Amended by Stats.2018, c. 798 (S.B.1087), § 6, eff. Jan. 1, 2019.)

§ 22686. Ability to pay annual payment obligations for the PACE assessment

A program administrator shall not execute an assessment contract, and no work shall commence under a home improvement contract that is financed by that assessment contract nor shall that home improvement contract be executed unless the program administrator makes a reasonable good faith determination that the property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 71, eff. Oct. 4, 2017, operative April 1, 2018. Amended by Stats.2018, c. 92 (S.B.1289), § 69, eff. Jan. 1, 2019; Stats.2018, c. 813 (A.B.2063), § 9, eff. Jan. 1, 2019.)

§ 22687. Determination of reasonable ability to pay; factors and considerations; verification of expected income or assets; reporting of funded and recorded PACE assessments; responsibility for difference between amount financed and owner's ability to pay; required assessment contract disclosure

(a) A program administrator shall determine before executing an assessment contract, and no work shall commence under a home improvement contract that is financed by that assessment contract nor shall that home improvement contract be executed until this determination is made, that the property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment based on the property owner's income, assets, and current debt obligations. The determination process shall be based on the following factors:

(1) The property owner shall submit on their application their monthly income and their monthly housing expenses.

(2) Housing expenses shall include all mortgage principal and interest payments, insurance, property taxes, mortgage guaranty insurance, and other preexisting fees and assessments on the property.

(3) Household income shall include the income of the mortgagor on the subject property and may include the income of any persons 18 years of age or older who are on title to the property. In complying with this paragraph, the program administrator shall do both of the following:

(A) The program administrator may also utilize the income of a property owner's legal spouse through marriage, as defined by Division 3 (commencing with Section 300) of the Family Code, or domestic partnership, as defined by Division 2.5 (commencing with Section 297) of the Family Code, who is not on title to the property. Any spouse or domestic partner who is not on title to the property shall consent, in writing, to the inclusion of his or her income and to the verification of his or her income as required pursuant to this section.

(B) For any person whose income is considered, the program administrator shall also consider their debt obligations pursuant to this section. The program administrator is not required to consider more income than is necessary, nor to verify assets if verified income is sufficient to determine the ability of the property owner to pay the annual payment obligations.

(4) Debt obligations in accordance with subdivision (c).

(5) In evaluating the income, assets, and current debt obligations of the property owner, the program administrator shall not consider the equity of the property that will secure the assessment contract.

(6) Pursuant to Section 5913 of the Streets and Highways Code, the program administrator shall ask the homeowner open-ended questions during the oral confirmation of key terms call, to confirm the income provided on the application and to identify the sources of their income.

(b)(1) The program administrator shall determine and consider the current or reasonably expected income or assets of the property owner that the program administrator relies on in order to determine a property owner's ability to pay the PACE assessment annual payment obligations using reasonably reliable third-party records of the property owner's income or assets. The program administrator may use automated verification provided the source of that verification is specific to the income of the property owner and not based on predictive or estimation methodologies, and has been determined sufficient for those verification purposes by a federal mortgage lending authority or regulator. Examples of records the program administrator may use to verify the property owner's income or assets include:

(A) A pay stub showing the most recent 30-day pay period or financial institution records showing regular deposits consistent with reported income for the most recent 60 days.

(B) Copies of the most recent tax returns the property owner filed with the Internal Revenue Service or the Franchise Tax Board.

(C) Copies of the most recent Internal Revenue Service Form W-2 (Wage and Tax Statement), or other similar Internal Revenue Service forms that are used for reporting wages or tax withholding.

(D) Payroll statements, including the Department of Defense Leave and Earnings Statement (LES).

(E) Financial institution records, such as bank statements or investment account statements reflecting the value of particular assets.

(F) Records from the property owner's employer or a third party that obtained income information from the employer.

(G) Records from a federal, state, or local government agency stating the property owner's income from benefits or entitlements. Income from benefits paid by a government entity shall not include any benefits for which the recipient must satisfy a means test or any cash equivalent nonmonetary benefits, such as food stamps.

(2) Income may not be derived from any of the following:

(A) Temporary sources of income.

(B) Nonliquid assets.

(C) Proceeds derived from the equity from the subject property.

(c) A program administrator shall consider the monthly debt obligations of the property owner to determine a property owner's ability to pay the annual payment PACE assessment obligations using reasonably reliable third-party records, including one or more consumer credit reports from agencies that meet the requirements of Section 1681a(p) of Title 15 of the United States Code. Program administrators shall use at least a two-file Merged Credit Report (MCR) or a Residential Mortgage Credit Report (RMCR). For purposes of this subdivision, monthly debt obligations include, but are not limited to, the following:

(1) All secured and unsecured debt.

(2) Alimony.

(3) Child support.

(4) Monthly housing expenses. If property tax and insurance obligations are not included in a property owner's escrow, a program administrator shall use reasonably reliable methods to determine these obligations.

(d) In calculating the ability of the property owner to pay the annual payment obligations, the program administrator shall determine that the property owner's income is sufficient to meet:

(1) The PACE payment, including all interest and fees.

(2) Any mortgage payments, as defined by the higher of the borrower's self-reported housing payment or housing expenses determined in accordance with paragraphs (1) and (2) of subdivision (a).

(3) All existing debts and obligations as identified in subdivision (c).

(4) Sufficient residual income to meet basic household living expenses, defined as expected expenses which may be variable based on circumstances and consumption patterns of the household. A program administrator may make reasonable estimation of basic living expenses based on the number of persons in the household. Examples of basic living expenses include, but are not limited to, the following:

(A) Food and other necessary household consumables.

(B) Transportation costs to work or school, including fuel costs, auto insurance and maintenance costs, and public transit costs.

(C) Utilities expenses for telecommunication, water, sewage, electricity, and gas.

(e) In the case of emergency or immediate necessity, the requirements of paragraph (1) of subdivision (b) may be waived, in accordance with the requirements of Section 5940 of the Streets and Highways Code, for the funding and recordation of a PACE assessment to finance a heating, ventilation, and air conditioning (HVAC) system, boiler, or other system whose primary function is temperature regulation in a home if all of the following are met:

(1) The program administrator first attempted to use an automated means of verification as described in paragraph (1) of subdivision (b).

(2) If the program administrator was unable to verify the property owner's income pursuant to paragraph (1) of subdivision (b), pursuant to Section 5913 of the Streets and Highways Code, the program administrator shall ask the property owner open-ended questions during the oral confirmation of key terms call to identify their income and the sources of their income. The program administrator shall comply with the requirements of subdivision (a), paragraph (2) of subdivision (b), and subdivisions (c) and (d).

(3) The funding is limited to the emergency or immediate necessity improvement and any required improvements directly necessary to the installation and safe operation of the improvement.

(4) Any efficiency improvement funded is eligible for PACE financing.

(5) The property owner executes a waiver of their right to cancel pursuant to subdivision (d) of Section 5940 of the Streets and Highways Code, and confirms, pursuant to Section 5913 of the Streets and Highways Code, the emergency or immediate necessity of the improvement.

(6) The amount of the assessment contract does not exceed fifteen thousand dollars (\$15,000) or a monthly equivalent payment on the PACE assessment of one hundred twenty-five dollars (\$125), as adjusted by any annual increase in the California Consumer Price Index as determined pursuant to Section 2212 of the Revenue and Taxation Code, whichever is greater.

(f) The program administrator shall report annually all PACE assessments that were funded and recorded pursuant to subdivision (e) in a form acceptable to the commissioner. The commissioner shall include this information in the annual composite report prepared in accordance with Section 22160.

(g)(1) If there is a difference between the determination of the property owner's ability to pay the annual PACE obligations and the actual amount financed for the property owner, and the property owner is obligated on the underlying home improvement contract, the program administrator shall be responsible for that difference. This subdivision does not apply in a case of intentional misrepresentation by the property owner. If the program administrator is responsible to pay the difference under this subdivision, the program administrator shall provide to the property owner a written disclosure of the methodology that the program administrator used to determine whether that there was a difference between the property owner's ability to pay the annual PACE obligation and the actual amount financed for the property owner for purposes of this subdivision.

(2) This subdivision only applies to an assessment contract that was executed between April 1, 2018, and January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 71, eff. Oct. 4, 2017, operative April 1, 2018. Amended by Stats.2018, c. 92 (S.B.1289), § 70, eff. Jan. 1, 2019; Stats.2018, c. 798 (S.B.1087), § 7, eff. Jan. 1, 2019; Stats.2018, c. 813 (A.B.2063), § 10, eff. Jan. 1, 2019.)

§ 22688. Information privacy requirements

A program administrator shall be subject to all provisions of the California Financial Information Privacy Act (Division 1.4 (commencing with Section 4050)) that are applicable to financial institutions.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 71, eff. Oct. 4, 2017, operative April 1, 2018. Amended by Stats.2018, c. 798 (S.B.1087), § 8, eff. Jan. 1, 2019.)

§ 22689. Prohibited acts by PACE solicitor; enforcement authority

(a) A program administrator shall not permit a PACE solicitor to do any of the following:

(1) Solicit a property owner to enter into an assessment contract with a program administrator, unless the PACE solicitor and the program administrator comply with the requirements of this chapter and any rules adopted by the commissioner.

(2) Engage in any act in violation of Section 5898.16 or 5898.17 of the Streets and Highways Code or Chapter 29.1 (commencing with Section 5900) of Part 3 of Division 7 of the Streets and Highways Code, including offering an assessment contract with terms, conditions, or disclosures that are not in compliance with applicable laws or that omits terms, conditions, or disclosures required by applicable law, excepting the reporting requirements of Section 5954 of the Streets and Highways Code.

(b) A program administrator shall be subject to the enforcement authority of the commissioner for any violations of this division, to the extent those violations have been committed by the program administrator or by a PACE solicitor authorized by that program administrator, in connection with activity related to that program administrator.

(c) A violation of any provision of Section 5898.16 or 5898.17 of the Streets and Highways Code or of any provision of Chapter 29.1 (commencing with Section 5900) of Part 3 of Division 7 of the Streets and Highways Code by a program administrator, excepting the reporting requirements of Section 5954 of the Streets and Highways Code, or by a PACE solicitor authorized by that program administrator in connection with activity related to that program administrator, shall be a violation of this division.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 71, eff. Oct. 4, 2017, operative Jan. 1, 2019. Amended by Stats.2018, c. 798 (S.B.1087), § 9, eff. Jan. 1, 2019; Stats.2018, c. 813 (A.B.2063), § 11, eff. Jan. 1, 2019.)

§ 22690. Inspection, examination, or investigation of program administrator; powers of commissioner; exhaustion of procedures; orders

(a) A program administrator is subject to an inspection, examination, or investigation in accordance with Section 22701.

(b) If, in the course of an inspection, examination, or investigation of a program administrator, the commissioner has cause to believe that the program administrator, the PACE solicitor, or the PACE solicitor agent may have committed a violation of this division or any rule or order thereunder, or the commissioner seeks to obtain or provide information necessary to the

commissioner in the administration of the division, with respect to a matter related to a PACE solicitor or PACE solicitor agent, and either this information is not available directly from the program administrator or the commissioner seeks to validate the information obtained from the program administrator, the commissioner may do the following:

(1) Inspect, examine, or investigate any and all documents, records, files, and communications of the PACE solicitor or PACE solicitor agent that are relevant to the violation or the matter. For purposes of the inspection, examination, or investigation, the commissioner and his or her representatives shall have access to the records of the PACE solicitor or PACE solicitor agent related to assessment contracts associated with the violation or matter.

(2) Require the attendance of witnesses and examine under oath all persons whose testimony he or she requires relative to the violation or matter.

(c) If, upon inspection, examination, or investigation, the commissioner has cause to believe that a PACE solicitor or PACE solicitor agent is violating any provision of this division or any rule or order thereunder, the commissioner or his or her designee shall exhaust the procedure set forth in paragraph (1) before bringing any action authorized under paragraph (2).

(1)(A) The commissioner shall issue a report to the program administrator, the PACE solicitor, and, if applicable, the PACE solicitor agent, documenting the commissioner's findings and, if applicable, requesting corrective action or a cessation of any violation of this division or any rule or order thereunder.

(B) The program administrator, PACE solicitor, and, if applicable, PACE solicitor agent, or any combination thereof, shall have the opportunity to provide a written answer to the report submitted pursuant to subparagraph (A) within a reasonable period and shall document in its written answer any voluntary corrective action or other actions taken or planned to address the commissioner's request. The commissioner shall shorten the period of time to provide a written answer to no greater than five business days if he or she has reasonable grounds to believe that a person is conducting business as a PACE solicitor or PACE solicitor agent, or both, in an unsafe or injurious manner.

(C) If following the process outlined in subparagraphs (A) and (B), the commissioner believes further action is necessary or appropriate, the commissioner may do any of the following, in any combination:

(i) Demand a corrective action by the program administrator, PACE solicitor, PACE solicitor agent, or any combination thereof.

(ii) Demand the program administrator, PACE solicitor, PACE solicitor agent, or any combination thereof, stop violating the division, rule, or order.

(iii) Demand the PACE solicitor or PACE solicitor agent, or both, discontinue engaging in the business of soliciting property owners to enter into assessment contracts related to any or all program administrators, or demand the program administrator deauthorize the PACE solicitor or PACE solicitor agent, or both, for a defined period not exceeding 12 months, or indefinitely.

(2)(A) The commissioner may, upon exhaustion of the procedure in paragraph (1), bring an order against a PACE solicitor, PACE solicitor agent, or both, as provided in this paragraph. However, the commissioner shall, upon exhaustion of the procedure in paragraph (1), bring an order against a PACE solicitor, PACE solicitor agent, or both, as provided in this paragraph, following either of the following:

(i) The issuance of a demand pursuant to clause (iii) of subparagraph (C) of paragraph (1).

(ii) The issuance of a demand pursuant to clause (i) or (ii) of subparagraph (C) of paragraph (1) involving a violation of Section 22161, when the commissioner believes that the public's interest will be served by the public nature of the order.

(B) The commissioner may order a PACE solicitor or PACE solicitor agent, or both, to desist and refrain from engaging in business as a PACE solicitor or PACE solicitor agent, or further violating this division, or the rules thereunder, in accordance with clause (i) and (ii) of this subparagraph. This paragraph does not authorize the commissioner to restrict the ability of a PACE solicitor or PACE solicitor agent to engage in any business that does not involve soliciting a property owner to enter into an assessment contract.

(i) If the order addresses unsafe or injurious behavior by a PACE solicitor or PACE solicitor agent, or both, the order shall be effective immediately. All other orders shall be effective once final.

(ii) If, within 30 days of the receipt of the order, the PACE solicitor or PACE solicitor agent, or both, fails to request a hearing, the order shall become final.

(iii) If, within 30 days of the receipt of the order, the PACE solicitor or PACE solicitor agent, or both, requests a hearing, the hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(C) The commissioner may, after appropriate notice and opportunity for a hearing, by order, censure or suspend for a period not exceeding 12 months, or bar any natural person from directly or indirectly soliciting a property owner to enter into an assessment contract, in accordance with clause (i) to (iv), inclusive, of this subparagraph. This paragraph does not authorize the commissioner to restrict the ability of a natural person to engage in any business that does not involve soliciting a property owner to enter into an assessment contract, or being

employed by a PACE solicitor in a capacity that does not involve soliciting a property owner to enter into an assessment contract.

(i) Within 15 days from the date of a notice of intention to issue an order pursuant to this subparagraph, 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).

(ii) Upon receipt of a request submitted pursuant to clause (i), the matter shall be set for hearing to commence within 30 days after the commissioner receives the request pursuant to clause (i), unless the person subject to the notice consents to a later date.

(iii) If no hearing is requested within 15 days after the mailing or service of the notice of intention as described in clause (i), and the commissioner does not order a hearing, the right to a hearing shall be deemed to be waived.

(iv) Upon receipt of a notice of intention to issue an order pursuant to this subparagraph, the person who is the subject of the proposed order is immediately prohibited from directly or indirectly soliciting a property owner to enter into an assessment contract.

(d) An order brought under paragraph (2) of subdivision (c) shall be public.

(e) A PACE solicitor or PACE solicitor agent subject to this section shall not be subject to Chapter 4 (commencing with Section 22700).

(f) The commissioner shall not be bound to the provisions of this section in connection with his or her enforcement of this division with respect to a program administrator.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 71, eff. Oct. 4, 2017, operative Jan. 1, 2019.
Amended by Stats.2018, c. 798 (S.B.1087), § 10, eff. Jan. 1, 2019.)

§ 22690.5. List of enrolled PACE solicitors and agents; posting on Internet Web site; list of solicitors and agents prohibited from soliciting property owners to enter into assessment contracts; posting on Internet Web site

(a) The department shall maintain, on its Internet Web site, the identities of enrolled PACE solicitors and PACE solicitor agents. The Internet Web site shall identify the date of the most recent update, and the frequency with which the list is updated. This subdivision shall become operative on January 1, 2020.

(b) The department shall maintain on its Internet Web site the identities of PACE solicitors and PACE solicitor agents ordered to discontinue engaging in the business of soliciting property owners to enter into assessment contracts. The Internet Web site shall identify the date of the most recent update.

Credits

(Added by Stats.2018, c. 798 (S.B.1087), § 11, eff. Jan. 1, 2019.)

§ 22691. Exemption of class of persons from rules

The commissioner may by any rules he or she deems necessary or appropriate in the public interest or for the protection of property owners, either unconditionally or upon specified terms and conditions or for specified periods, exempt any class of persons specified in those rules from the provisions of Sections 22680, 22681, and 22682.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 71, eff. Oct. 4, 2017, operative Jan. 1, 2019.
Amended by Stats.2018, c. 813 (A.B.2063), § 12, eff. Jan. 1, 2019.)

§ 22692. Information to be submitted by program administrator in annual report

(a) The commissioner shall require a program administrator to submit the following information in the annual report filed under Section 22159:

- (1) Information beneficial to an evaluation of the overall impact on property owners caused by the 97 percent cap on total PACE and mortgage-related debt.
- (2) Information beneficial to an evaluation of the overall impact on property owners caused by the use of an automated valuation model in determining the market value of property subject to a PACE assessment.
- (3) Information beneficial to an evaluation of the overall impact on property owners caused by the emergency HVAC provisions.
- (4) Information relevant to determining the overall impact on property owners of the absence of a minimum residual income threshold.

(b) The information received under this section shall appear in a separate section within the composite of the annual reports required to be prepared by the commissioner pursuant to Section 22160.

(c) This section does not limit the authority of the commissioner to require additional information from a program administrator under Section 22159.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 71, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22693. Use of real-time registry or database system for tracking PACE assessments; registry features; rulemaking

(a) The commissioner may, by rule, require a program administrator to use a real-time registry or database system for tracking PACE assessments in order to carry out his or her regulatory duties and to support enforcement. That registry or database system shall enable the program administrator to trace PACE assessments and shall include, but not be limited to, features for providing or obtaining information about a property's status with regard to PACE assessments placed on the property, whether recorded or not. All costs associated with the real-time registry or database system shall be apportioned among licensed program administrators based on the volume and amount of PACE assessments by each program administrator, or any other method that fairly apportions the costs, as required by rule. The commissioner may contract with an independent third party for the development and ongoing maintenance and support of the real-time registry or database system, and may require the program administrators to pay for the cost of development and ongoing maintenance and support directly to the independent third party. In no event shall the costs apportioned to a program administrator exceed a reasonable regulatory cost.

(b) On or before January 1, 2020, the commissioner shall determine whether to proceed with a rulemaking action. This subdivision shall not restrict the ability of the commissioner to proceed with a rule under this section at any time.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 71, eff. Oct. 4, 2017, operative Jan. 1, 2019. Amended by Stats.2018, c. 798 (S.B.1087), § 12, eff. Jan. 1, 2019; Stats.2018, c. 813 (A.B.2063), § 13, eff. Jan. 1, 2019.)

§ 22694. Application of chapter

This chapter does not apply to a finance lender, mortgage loan originator, or broker licensee, unless they engage in the business of a program administrator, PACE solicitor, or PACE solicitor agent.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 71, eff. Oct. 4, 2017, operative Jan. 1, 2019. Amended by Stats.2018, c. 798 (S.B.1087), § 13, eff. Jan. 1, 2019.)

§ 22695. Violation of this chapter; criminal penalties

(a) A violation of this chapter by any person is not subject to the criminal penalties established pursuant to Sections 22753 and 22780.

(b) Notwithstanding Section 22696, this section shall become operative on the effective date of this act.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 71, eff. Oct. 4, 2017.)

§ 22696. Operative date

Except as provided in Sections 22684, 22685, 22686, 22687, 22688, and 22695, this chapter shall become operative on January 1, 2019.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 71, eff. Oct. 4, 2017, operative Jan. 1, 2019.)

§ 22697. Rights and remedies

This chapter does not preclude or reduce any rights and remedies established under any other laws.

Credits

(Added by Stats.2017, c. 475 (A.B.1284), § 71, eff. Oct. 4, 2017, operative Jan. 1, 2019.)