

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians***NOTICE OF RULEMAKING ACTION
TITLE 10. CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT****NOTICE IS HEREBY GIVEN [Government Code Section 11346.5, Subdivision (a)(1)]**

The Commissioner of Business Oversight (Commissioner) proposes to amend sections 1422.6.1, 1422.6.3, 1950.122.5.1 and 1950.122.5.3 of Title 10 of the California Code of Regulations, relating to licensure and renewal requirements for mortgage loan originators, after considering all comments, objections, and recommendations regarding the proposed action.

On July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to form the Department of Business Oversight. The Department of Business Oversight (Department) has all of the powers, authority, enforcement, jurisdiction, laws and regulations that were under the former Department of Corporations and former Department of Financial Institutions.

AUTHORITY [Government Code Section 11346.5, Subdivision (a)(2)]

Financial Code sections 22150 and 50304 authorize the Commissioner to amend the proposed regulations.

REFERENCE [Government Code Section 11346.5, Subdivision (a)(2)]

The proposed regulations implement, interpret and make specific sections 22109.1, 22109.2, 22109.3, 22109.4, 22109.5, 50141, 50142, 50143, 50144, and 50145 of the Financial Code.

PUBLIC HEARING [Government Code Section 11346.5, Subdivision (a)(17)]

A public hearing has not been scheduled. Any interested person or his or her duly authorized representative may request a public hearing no later than 15 days prior to the close of the written comment period. If the Department receives a request for a public hearing, the Department will provide notice of the time, date, and place of the hearing by mailing the notice to every person who has filed a request for notice with the Department.

WRITTEN COMMENT PERIOD [Government Code Section 11346.5, Subdivision (a)(15)]

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department addressed as follows:

Regular Mail

Department of Business Oversight
Attention: Dan Warren, Regulations Coordinator
1515 K St., Ste. 200
Sacramento, CA 95814

Electronic Mail

regulations@dbo.ca.gov

Fascimile

(916) 322-5875

Comments must be received by May 4, 2015 to be considered by the Department before it proceeds with this regulatory action.

INFORMATIVE DIGEST [Government Code Section 11346.5, Subdivision (a)(3)]

The Department of Business Oversight (Department) licenses and regulates lenders, brokers, and mortgage loan originators under the California Finance Lenders Law, (Fin. Code, §22000 et seq.), and residential mortgage lenders, servicers and mortgage loan originators under the California Residential Mortgage Lending Act, (Fin. Code, §50000 et seq.). Under the California Finance Lenders Law and the California Residential Mortgage Lending Act, the Commissioner must deny an application for a mortgage loan originator license unless the Commissioner makes specified findings, among other things, that the applicant has: (1) completed at least 20 hours of pre-licensing education; and (2) passed a qualified written test. In order to renew his or her license, a mortgage loan originator must comply with specified requirements, including completing at least eight hours of continuing education.

A. Mortgage Loan Originator Education and Testing Requirements Prior to Senate Bill 1459

Senate Bill 1459 (Chap. 123, Stats. 2014), amended the mortgage loan originator education and testing requirements. Prior to Senate Bill 1459, in order to meet the prelicensing education requirement, a person had to complete at least 20 hours of education that included: (1) three hours of federal law and regulations;

(2) three hours of ethics, which included instruction on fraud, consumer protection, and fair lending issues; and (3) two hours of training related to lending standards for the nontraditional mortgage product marketplace. California did not prescribe the content of the remaining 12 hours of prelicensing education.

In order to meet the annual continuing education requirements, a state-licensed mortgage loan originator had to complete at least eight hours of education that included: (1) three hours of federal law and regulations; (2) two hours of ethics, which included instruction on fraud, consumer protection, and fair lending issues; and (3) two hours of training related to lending standards for the nontraditional mortgage product marketplace. California did not prescribe the content of the remaining two hours of continuing education.

In order to meet the written test requirement, an individual had to pass a qualified written test developed by the Nationwide Mortgage Licensing System and Registry (NMLS) to qualify for a mortgage loan originator license. A qualified written test must adequately measure the applicant's knowledge and comprehension in specified subject areas. The qualified written test includes two parts; a national component and a California component, based on the original test design of the NMLS. However, in response to industry concerns regarding the regulatory burden associated with requiring separate individual state components, a Uniform State Test, which replaces the state-specific test components for states that adopt it, was developed and adopted on April 1, 2013, by the NMLS. While 40 other states have adopted the new Uniform State Test, California has not because its current regulations require applicants to pass a qualified written test that consists of a national component and a California component. The Uniform State Test only tests applicants on their knowledge of high level state-related content that is based on the federal *Secure and Fair Enforcement for Mortgage Licensing Act of 2008*¹, (SAFE Act) and the Model State Law, which many states, including California, used to implement the SAFE Act. The Uniform State Test would not test applicants on California specific laws.

B. Changes to Education and Testing Requirements Pursuant to Senate Bill 1459

Senate Bill 1459, which became effective January 1, 2015, modified the testing and education licensure and renewal requirements for mortgage loan originators. Specifically, Senate Bill 1459: (1) requires mortgage loan originator applicants to take two hours of training related to relevant California law and regulations; (2) requires mortgage loan originator licensees to complete one hour of training related to relevant California law and regulations; and (3) enables the Department to adopt qualified written tests that are "deemed acceptable" by the NMLS, in addition to tests that are "developed" by the NMLS.

The proposed regulatory action would confirm and clarify the education and

¹ 12 U.S.C §§ 5101-5116

testing requirements for licensure and renewals for mortgage loan originators, as updated by Senate Bill 1459. This regulatory action would update the Department's mortgage loan originator regulations to include Senate Bill 1459's education and testing requirements. The action would also authorize the Department to adopt the Uniform State Test, by removing the current requirement that a qualified written test include a "California component."

C. Objectives and Benefits Anticipated from this Regulatory Action

The broad objectives and benefits anticipated from this regulatory action include providing nonmonetary benefits to California, protecting general welfare and protecting the public by: (1) helping ensure that mortgage loan originators are knowledgeable about California lending laws by confirming that applicants must take California-specific prelicensing education and licensees must take California-specific continuing education; (2) confirming that the Department may require mortgage loan originators to take any test that is "deemed acceptable" by the NMLS; and (3) clarifying that a test with national and "state specific" instead of "California specific" content meets the definition of a "qualified written test." Specifically, the education provisions will protect borrowers and the state's economy by helping educate mortgage loan originators on how to properly originate appropriate loans for borrowers. The testing provisions that allow for the adoption of the Uniform State Test will also help the state's economy by encouraging mortgage loan originators to obtain licensure in California. Since passage of the test in one state satisfies the testing requirement for all states in which it is adopted, applicants that have passed the Uniform State Test would be considered to have met California's qualified written test requirement.

D. Consistency with Existing Statutes and Regulations

The proposed regulatory action is consistent with existing mortgage loan originator regulations and laws, including Senate Bill 1459, and other Department regulations that set forth requirements for mortgage loan originator licensure and renewals. The Department's existing regulations largely mirror the SAFE Act's licensure and renewal requirements for mortgage loan originators. The proposed action would incorporate Senate Bill 1459's modifications to these requirements. The action is consistent with the intent of the SAFE Act to provide additional consumer protections with respect to loan originating activities, while promoting revitalization of the housing market and providing uniform licensure and reporting requirements for state-licensed loan originators.

EXISTING FEDERAL REGULATION OR STATUTE [Government Code Section 11346.5, Subdivision (a)(3)(B)]

The licensing of mortgage loan originators is prescribed by the federal SAFE Act,

regulations promulgated thereunder, and the State Model Language², which were largely adopted by all states. The SAFE Act is designed to enhance consumer protection and reduce fraud through the setting of minimum standards for the licensing and registration of state-licensed mortgage loan originators, as specified. Among other things, the SAFE Act requires state-licensed mortgage loan originators to pass a written qualified test, to complete pre-licensure education courses, and to take annual continuing education courses.

In order to meet the written test requirement, an individual must pass a qualified written test developed by the NMLS and administered by an approved test provider. A qualified written test must adequately measure the applicant's knowledge and comprehension in appropriate subject areas, including: (1) ethics; (2) federal law and regulation pertaining to mortgage origination; (3) state law and regulation pertaining to mortgage origination; and (4) federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

In order to meet the pre-licensure education requirement, a person must complete at least 20 hours of education, which must include: (1) three hours of federal law and regulations; (2) three hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; and (3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

In order to meet the annual continuing education requirements, a state-licensed loan originator must complete at least eight hours of education, which must include: (1) three hours of federal law and regulations; (2) two hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; and (3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

EXISTING STATE REGULATIONS [Government Code Section 11346.5, Subdivision (a)(3)(D)]

The Department has conducted an evaluation of whether the proposed regulations are consistent with existing laws and has concluded that these regulations either complement or modify current regulations regarding mortgage loan originator testing and education licensure requirements under both the California Finance Lenders Law and the California Residential Mortgage Lending Act. The proposed regulatory action is consistent with existing regulations and policy considerations under the California Finance Lenders Law and the California Residential Mortgage Lending Act, and therefore the proposed amendments are neither inconsistent nor incompatible with existing state regulations.

² The Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators drafted model language for legislation, which the states used as guidance in implementing the SAFE Act in their respective states.

FORMS INCORPORATED BY REFERENCE [Title 1, California Code of Regulations, Section 20, Subdivision (c)(3)]

This regulatory action does not incorporate any forms by reference.

ANY OTHER MATTERS PRESCRIBED BY STATUTE [Government Code 11346.5, Subdivision (a)(4)]

No other matters are prescribed by statute.

DETERMINATION REGARDING MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS [Government Code 11346.5, Subdivision (a)(5)]

This regulatory action does not impose a mandate on local agencies or school districts.

ESTIMATE OF COST OR SAVINGS [Government Code Section 11346.5, Subdivision (a)(6)]

State Agency

This regulatory action will likely be cost neutral. The adoption of the Uniform State Test through this action would result in a cost savings to the Department resulting from discontinued maintenance of the California state test every two years. The estimated costs to implement and maintain the state-specific pre-licensing education and continuing education requirements required by Senate Bill 1459 should be minimal and offset by the cost savings realized from discontinuing the California-specific test. This action does not propose new requirements for mortgage loan originators, but instead proposes to incorporate Senate Bill 1459's education requirements into the Department's mortgage loan originator regulations.

The Department will likely experience an increase in mortgage loan originator applications upon adoption of the Uniform State Test. Comparably populated states experienced a 29% increase in new applications after adopting the test. Currently, the Department consistently receives 600 to 700 new applications per month and has more than 23,000 licensed mortgage loan originators. The Department may need to shift staff in order to process the increase in applications and provide maintenance for the increased number of mortgage loan originators on an ongoing basis.

Other

This regulatory action will not result in any cost to any local agency or school district required to be reimbursed pursuant to 17500 et seq., will not result in other nondiscretionary cost or savings imposed on local agencies, and will not result in cost or

savings in federal funding to the state.

DETERMINATION REGARDING ADVERSE ECONOMIC IMPACT [Government Code Section 11346.5, Subdivision (a)(7) and (8)]

The Department has made an initial determination that this regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

DESCRIPTION OF ALL COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS [Government Code Section 11346.5 Subdivision (a)(9)]

This regulatory action will not negatively impact existing and future licensees. The proposed rulemaking action would only incorporate Senate Bill 1459's new mortgage loan originator education and testing provisions in the Department's mortgage loan originator regulations. The action may result in a cost savings and reduction in test preparation time for mortgage loan originators due to the proposed replacement of the California-specific test with the Uniform State Test.

RESULTS OF ECONOMIC IMPACT ASSESMENT [Government Code Section 11346.5, Subdivision (a)(10)]

The Department has assessed the potential for adverse economic impact on California business enterprises and individuals, with consideration of the ability of California businesses to compete with businesses in other states.

The Department has determined that:

- The proposed regulatory action will not result in the elimination of jobs within California, but may result in the creation of jobs in the state;
- The proposed action will not create new businesses or eliminate existing businesses within this state;
- The proposed action will not negatively affect the expansion of businesses currently doing business within California, but may encourage the expansion of such businesses; and
- No benefits or adverse impacts to worker safety or to the state's environment are anticipated from this regulatory action.

The Department has determined that this regulatory action will benefit the welfare of California residents. Specifically, the action will protect borrowers and the state's economy by helping ensure that mortgage loan originators are knowledgeable about California lending laws by clarifying their education requirements. Additionally, the

action will help the state's economy by encouraging mortgage loan originators to obtain licensure in California, as passage of the Uniform State Test in one state satisfies the testing requirement for all states, in which it is adopted.

DETERMINATION OF EFFECT ON SMALL BUSINESS [Section 4 of Title 1 of the California Code of Regulations]

This regulatory action will not impact small business. Under subdivision (b)(1) of Government Code Section 11342.610, consumer finance companies, commercial finance companies and mortgage bankers are not small businesses.

FINDING REGARDING REPORT [Government Code Section 11346.5, Subdivision (a)(11)]

This regulatory action does not require a report.

EFFECT ON HOUSING COSTS [Government Code Section 11346.5, Subdivision (a)(12)]

This regulatory action will not have a significant effect on housing costs.

STATEMENT REGARDING REASONABLE ALTERNATIVES [Government Code Section 11346.5, Subdivision (a)(13)]

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

AVAILABILITY OF THE NOTICE, STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE [Government Code Section 11346.5, Subdivisions (a)(16) and (20), and (b)]

The Department has prepared a statement of reasons for the proposed action, and has available all the information upon which the proposal is based and the express terms of the proposed action. This notice of rulemaking, the text of the proposed regulatory action, and the initial statement of reasons for the proposed regulatory action are available on the Department's website at www.dbo.ca.gov. To access the documents from the Department's Web site, click on the "Laws & Regs" tab at the top of the home page, click on the "Rulemaking" link under "Division of Corporations", and then click on the "California Finance Lenders Law" or "California Residential Mortgage Lending Act" link.

The initial statement of reasons and proposed text may also be obtained at the front counter of any of the Department's locations, below, by requesting Document PRO 11/13-B or 11/13-C. The documents are also available from the contact person designated at the end of this notice.

Los Angeles Office:

320 West 4th Street, Suite 750
Los Angeles, CA 90013-2344

Sacramento Office:

1515 K Street, Suite 200
Sacramento, CA 95814-4052

San Diego Office:

1350 Front Street, Room 2034
San Diego, CA 92101-3697

San Francisco Office:

One Sansome Street, Suite 600
San Francisco, CA 94104-4448

As required by the Administrative Procedure Act, the Legal Division maintains the rulemaking file. The rulemaking file is available for public inspection and copying throughout the rulemaking process at the Department of Business Oversight, Legal Division, 1515 K Street, Suite 200, Sacramento, California 95814.

AVAILABILITY OF CHANGED OR MODIFIED TEXT [Government Code Section 11346.5, Subdivision (a)(18)]

If the Department makes changes to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts, amends, or repeals the regulations as revised. A request for a copy of any modified text should be addressed to the contact person designated below. The modified text will also be available on the Department's web site. The Department will accept written comments on the modified text for at least 15 days after the date on which it is made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS [Government Code Section 11346.5, Subdivision (a)(19)]

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONTACT PERSONS [Government Code Section 11346.5, Subdivision (a)(14)]

Inquiries concerning the proposed administrative action may be directed to:

Sherri Kaufman
Senior Counsel
1515 K Street, Suite 200
Sacramento, California 95814
Telephone: (916) 324-6965

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e-mail: Sherri.Kaufman@dbo.ca.gov

The **backup contact person** for these inquiries is:

Dan Warren

Regulations Coordinator

1515 K Street, Suite 200

Sacramento, California 95814

Telephone: (916) 322-3553

e-mail: Dan.Warren@dbo.ca.gov

Dated: March 4, 2015
 Sacramento, California