

THE CALIFORNIA CORPORATIONS COMMISSIONER HEREBY ADOPTS
THE FOLLOWING CHANGES IN THE REGULATIONS UNER THE
CALIFORNIA FINANCE LENDERS LAW AND THE
CALIFORNIA RESIDENTIAL MORTGAGE LENDING ACT
AS SET FORTH IN CHAPTER 3, TITLE 10
EFFECTIVE: JANUARY 1, 2008

1. Section 1436 is adopted to read:

Nontraditional, Adjustable Rate and Mortgage Loan Products.

§ 1436. (a) *Best Practices.* Every finance company shall implement best practices to manage loan product risk on a continuous basis. These best practices shall include practices set forth in the Guidance on Nontraditional Mortgage Product Risks published on November 14, 2006 by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, which is hereby incorporated by reference, and the Statement on Subprime Mortgage Lending published on July 17, 2007 by the aforementioned entities and the National Association of Consumer Credit Administrators, which is hereby incorporated by reference. Both publications are collectively referred to herein as the "Guidance" and are available on the Department's web site at www.corp.ca.gov. For purposes of this section, "best practices" shall mean lawful processes, policies, and procedures to manage risks associated with use of nontraditional mortgage products and adjustable rate mortgage products as defined and prescribed by the Guidance.

(b) *Written Compliance Report.* In a separate written document, submitted as an addendum to its annual financial report required under Section 22159 of the Financial Code, every finance company shall state whether it made or arranged nontraditional mortgage products and adjustable rate mortgage products, as defined by the Guidance, during the reporting period covered by the annual report. If any such loans were made or arranged, the finance company shall also explain how it has implemented best

practices and explain whether and how it has put into effect the following internal controls or procedures during the reporting period: adopted processes, policies and procedures to ensure compliance with the Guidance; designated a compliance officer (including contact information of that officer) to ensure compliance with the Guidance; implemented a consumer complaint process to resolve consumer complaints involving loans covered by the Guidance; and educated employees and agents to help them understand how to apply the best practices. In addition, the finance company shall indicate the number of any consumer complaints it received during the reporting period regarding loans that are subject to the Guidance, including the number of resolved complaints and unresolved complaints and the number of workout arrangements used for resolved complaints. For purposes of this section, “workout arrangement” shall mean a modified or converted loan product with predictable payment requirements to help the financially-stressed borrower. If any nontraditional mortgage loans or adjustable rate mortgage loans subject to the Guidance were made or arranged, the finance company shall also submit information regarding those loan products on the form entitled Non-traditional, Adjustable Rate and Mortgage Loan Survey (Rev. 8/07), which is hereby incorporated by reference. This form is available on the Department’s website at www.corp.ca.gov.

(c) *Books and Records.* If the finance company receives any reportable consumer complaints described in subsection (b), the finance company shall maintain for each complaint a copy of the complaint and the finance company’s written response or explanation of how the company resolved the complaint including any workout arrangement, shall maintain this documentation as part of its books and records, and shall make the documentation available to the commissioner upon request. In addition, if the finance company reports any internal controls or procedures or nontraditional or

adjustable rate loans described in subsection (b), the finance company shall maintain documentation of those controls or procedures as part of its books and records, and any loan documentation required by law, and shall make the documentation available to the commissioner upon request.

(d) Loan Disclosures. Every finance company shall, within three business days after receipt of a completed application for a nontraditional loan or an adjustable rate loan that is subject to the Guidance, or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower statements in writing disclosing, in a clear and conspicuous manner, information comparing payment scenarios and loan balance scenarios among any nontraditional loan and adjustable rate loan products offered by the finance company and that are subject to the Guidance. This information shall be provided by one of the following methods:

(1) The form entitled Comparison of Sample Mortgage Features: Typical Mortgage Transaction (8/1/07), which is hereby incorporated by reference. This form and its instructions are available on the Department's website at www.corp.ca.gov; or

(2) The form of the typical mortgage transaction disclosures set forth in the Comparison of Single Mortgage Features of the Form RE 885 of the Department of Real Estate, as required by Title 10, California Code of Regulations, Section 2842, when provided by a real estate broker on behalf of the finance company. This form is available on the Department of Real Estate website at www.dre.ca.gov; or

(3) Any other form used by the finance company to compare payment scenarios and loan balance scenarios among any nontraditional loan and adjustable rate loan products that are subject to the Guidance; provided, however, that the form shall, at a minimum, (A) compare monthly payments and loan balances of these loan products offered by the finance company, and (B) reflect the borrower's proposed loan amount.

(e) Advertising Prohibitions. For purposes of Section 22161 of the Financial Code, the following are considered false, misleading, or deceptive advertising prohibited by that section for loans that are subject to the Guidance:

(1) Any advertisement of an installment in repayment of an adjustable rate, interest only or payment-option loan without an equally prominent disclosure of the following information about the loan as applicable:

(A) Principal amount

(B) Term of loan

(C) Initial interest rate

(D) Number of months the initial interest rate will be in effect

(E) Fully-indexed interest rate

(F) Maximum interest rate

(G) If different, an explanation of the difference between the payment rate, initial interest rate and fully-indexed rate

(H) Annual percentage rate

(I) How often the interest rate and payments can change

(J) Maximum periodic change in the interest rate and payments (periodic caps)

(K) Number of months and percentage of original loan amount after which minimum payments will not be accepted and the loan re-amortizes

(L) The monthly payment based on the maximum interest rate, and the loan balance after all negative amortization is included, assuming minimum payments are made

(M) If the loan contains a prepayment penalty, a statement to that effect

(N) If the loan contains a balloon payment, a statement to that effect

(2) Any advertisement that the licensee can arrange “low doc/no doc”, “no income/no asset”, “stated income”, “stated asset”, “no ratio” or similar loan products without a statement that these products may have a higher interest rate, more points or more fees than other products requiring documentation.

(f) This section does not apply to a commercial loan. This section applies to loans secured by residential real property located in this State improved by a one-to-four family dwelling.

NOTE: Authority cited: Section 22150, Financial Code. Reference cited: Sections 22150, 22156, 22157, 22159, 22161, 22163, 22164, 22171, 22302, 22502, 22701, and 22714, Financial Code.

2. Section 1950.314.8 is adopted to read:

Nontraditional, Adjustable Rate and Mortgage Loan Products.

§ 1950.314.8. (a) *Best Practices*. Every licensee shall implement best practices to manage loan product risk on a continuous basis. These best practices shall include practices set forth in the Guidance on Nontraditional Mortgage Product Risks published on November 14, 2006 by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, which is hereby incorporated by reference, and the Statement on Subprime Mortgage Lending published on July 17, 2007 by the aforementioned entities and the National Association of Consumer Credit Administrators, which is hereby incorporated by reference. Both publications are collectively referred to herein as the “Guidance” and are available on the Department’s web site at www.corp.ca.gov. For purposes of this section, “best practices” shall mean

lawful processes, policies, and procedures to manage risks associated with use of nontraditional mortgage products and adjustable rate mortgage products as defined and prescribed by the Guidance.

(b) *Written Compliance Report.* In a separate written document, submitted as an addendum to its annual financial report required under Section 50307 of the Financial Code, every licensee shall state whether it made or arranged nontraditional mortgage products and adjustable rate mortgage products, as defined by the Guidance, during the reporting period covered by the annual report. If any such loans were made or arranged, the licensee shall also explain how it has implemented best practices and explain whether and how it has put into effect the following internal controls or procedures during the reporting period: adopted processes, policies and procedures to ensure compliance with the Guidance; designated a compliance officer (including contact information of that officer) to ensure compliance with the Guidance; implemented a consumer complaint process to resolve consumer complaints involving loans covered by the Guidance; and educated employees and agents to help them understand how to apply the best practices. In addition, the licensee shall indicate the number of any consumer complaints it received during the reporting period regarding loans that are subject to the Guidance, including the number of resolved complaints and unresolved complaints and the number of workout arrangements used for resolved complaints. For purposes of this section, “workout arrangement” shall mean a modified or converted loan product with predictable payment requirements to help the financially-stressed borrower. If any nontraditional mortgage loans or adjustable rate mortgage loans subject to the Guidance were made or arranged, the finance company shall also submit information regarding those loan products on the form entitled Non-traditional,

Adjustable Rate and Mortgage Loan Survey (Rev. 8/07), which is hereby incorporated by reference. This form is available on the Department's website at www.corp.ca.gov.

(c) Books and Records. If the licensee receives any reportable consumer complaints described in subsection (b), the licensee shall maintain for each complaint a copy of the complaint and the licensee's written response or explanation of how the company resolved the complaint including any workout arrangement, shall maintain this documentation as part of its books and records, and shall make the documentation available to the commissioner upon request. In addition, if the licensee reports any internal controls or procedures or nontraditional or adjustable rate loans described in subsection (b), the licensee shall maintain documentation of those controls or procedures as part of its books and records, and any loan documentation required by law, and shall make the documentation available to the commissioner upon request.

(d) Loan Disclosures. Every licensee shall, within three business days after receipt of a completed application for a nontraditional loan or an adjustable rate loan that is subject to the Guidance, or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower statements in writing disclosing, in a clear and conspicuous manner, information comparing payment scenarios and loan balance scenarios among any nontraditional loan and adjustable rate loan products offered by the licensee and that are subject to the Guidance. This information shall be provided by one of the following methods:

(1) The form entitled Comparison of Sample Mortgage Features: Typical Mortgage Transaction (8/1/07), which is hereby incorporated by reference. This form and its instructions are available on the Department's website at www.corp.ca.gov; or

(2) The form of the typical mortgage transaction disclosures set forth in the Comparison of Single Mortgage Features of the Form RE 885 of the Department of

Real Estate, as required by Title 10, California Code of Regulations, Section 2842, when provided by a real estate broker on behalf of the finance company. This form is available on the Department of Real Estate website at www.dre.ca.gov; or

(3) Any other form used by the licensee to compare payment scenarios and loan balance scenarios among any nontraditional loan and adjustable rate loan products that are subject to the Guidance; provided, however, that the form shall, at a minimum, (A) compare monthly payments and loan balances of these loan products offered by the licensee, and (B) reflect the borrower's proposed loan amount.

(e) Advertising Prohibitions. For purposes of Section 50204 of the Financial Code, the following are considered false, misleading, or deceptive advertising prohibited by that section for loans that are subject to the Guidance:

(1) Any advertisement of an installment in repayment of an adjustable rate, interest only or payment-option loan without an equally prominent disclosure of the following information about the loan as applicable:

(A) Principal amount

(B) Term of loan

(C) Initial interest rate

(D) Number of months the initial interest rate will be in effect

(E) Fully-indexed interest rate

(F) Maximum interest rate

(G) If different, an explanation of the difference between the payment rate, initial interest rate and fully-indexed rate

(H) Annual percentage rate

(I) How often the interest rate and payments can change

(J) Maximum periodic change in the interest rate and payments (periodic caps)

(K) Number of months and percentage of original loan amount after which minimum payments will not be accepted and the loan re-amortizes

(L) The monthly payment based on the maximum interest rate, and the loan balance after all negative amortization is included, assuming minimum payments are made

(M) If the loan contains a prepayment penalty, a statement to that effect

(N) If the loan contains a balloon payment, a statement to that effect

(2) Any advertisement that the licensee can arrange "low doc/no doc", "no income/no asset", "stated income", "stated asset", "no ratio" or similar loan products without a statement that these products may have a higher interest rate, more points or more fees than other products requiring documentation.

(f) This section applies to loans secured by residential real property located in this State improved by a one-to-four family dwelling.

NOTE: Authority cited: Section 50304, Financial Code. Reference cited: Sections 50003, 50124, 50204, 50302, 50304, 50307, 50308, 50314, 50322, and 50333, Financial Code.