

ASSEMBLY BILL

No. 1203

Introduced by Assembly Member Kuykendall

February 28, 1997

An act to amend Sections 50124, 50302, 50306, and 50401 of the Financial Code, relating to financial institutions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1203, as introduced, Kuykendall. Finance: mortgage lending.

(1) Existing law provides for the regulation of persons engaged in the business of making or servicing residential mortgage loans under the authority of the Commissioner of Corporations. Existing law requires the license application to contain an agreement to maintain business records for 60 months.

This bill would require those records to be maintained for 37 months.

(2) Existing law requires the commissioner to examine the affairs of each licensee at least once every 24 months.

This bill would require that examination at least once every 36 months. It would also revise provisions permitting cooperation with, and the use of examinations by, federal or state regulators, as specified.

(3) Existing law provides for the imposition of a fine for a licensee that opens a branch office or changes its location without approval of the commissioner.

This bill would require notification of the commissioner rather than approval of the commissioner.

(4) Existing law provides for an assessment of licensees to pay the costs of regulation.

This bill would revise provisions relating to an assessment, and would limit the statutory maximum increase to 10% per year, unless specifically approved by the Legislature as part of the Budget Act.

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

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

1 SECTION 1. Section 50124 of the Financial Code is
2 amended to read:

3 50124. (a) A license application must be
4 accompanied by an exhibit containing statements that
5 the applicant agrees to do the following:

6 (1) To maintain staff adequate to meet the
7 requirements of this division, as prescribed by rule or
8 order of the commissioner.

9 (2) To keep and maintain for ~~60~~ 37 months the business
10 records and other information required by law or rules of
11 the commissioner regarding any mortgage loan made or
12 serviced in the course of the conduct of its business.

13 (3) To file with the commissioner any report required
14 under law or by rule or order of the commissioner.

15 (4) To disburse funds in accordance with its
16 agreements and to make a good faith and reasonable
17 effort to effect closing in a timely manner.

18 (5) To account or deliver to a person any personal
19 property such as money, funds, deposit, check, draft,
20 mortgage, other document, or thing of value, that has
21 come into its possession and is not its property, or that it
22 is not in law or equity entitled to retain under the
23 circumstances, at the time that has been agreed upon or
24 is required by law, or, in the absence of a fixed time, upon
25 demand of the person entitled to the accounting or
26 delivery.

27 (6) To file with the commissioner an amendment to its
28 application prior to any material change in the
29 information contained in the application for licensure,



1 including, without limitation, the plan of operation, or a
2 proposal to open a branch office in this state or to change
3 the business location or locations of the applicant or the
4 branch offices of the applicant from which activities
5 subject to this division are conducted. The commissioner
6 shall, within 20 business days of receiving a completed
7 amendment to the application, or within a longer time if
8 agreed to by the licensee, issue an order approving or
9 disapproving the effectiveness of the proposed
10 amendment.

11 (7) To comply with the provisions of this division, and
12 with any order or rule of the commissioner.

13 (8) To submit to periodic examination by the
14 commissioner as required by this division.

15 (9) To advise the commissioner by amendment to its
16 application of any material judgment filed against, or
17 bankruptcy petition filed by, the licensee within five days
18 of the filing.

19 (b) The exhibit also shall contain a space for the
20 applicant to attest that the applicant:

21 (1) Has complied with all applicable state and federal
22 tax return filing requirements for the past three years or
23 has filed with the commissioner an accountant's or
24 attorney's statement as to why no return was filed.

25 (2) Has not committed a crime against the laws of any
26 state or the United States, involving moral turpitude,
27 misrepresentation, fraudulent or dishonest dealing, or
28 fraud, and has disclosed to the commissioner any final
29 judgment entered against it in a civil action upon grounds
30 or allegations of fraud, misrepresentation, or deceit.

31 (3) Has not engaged in conduct that would be cause
32 for denial of a license.

33 (4) Is not insolvent.

34 (5) Has acted with due care and competence in
35 performing any act for which it is required to hold a
36 license under this division.

37 (6) Any other matter as required by rule of the
38 commissioner.

39 SEC. 2. Section 50302 of the Financial Code is
40 amended to read:



1 50302. (a) ~~Commencing June 30, 1996, and as~~ As
2 often as the commissioner deems necessary and
3 appropriate, but at least once every ~~24~~ 36 months, the
4 commissioner shall examine the affairs of each licensee
5 for compliance with this division. ~~The commissioner may,~~
6 ~~as the commissioner deems necessary and appropriate,~~
7 ~~conduct an examination of the affairs of a licensee prior~~
8 ~~to June 30, 1996.~~ The commissioner shall appoint suitable
9 persons to perform the examination. The commissioner
10 and his or her appointees may examine the books,
11 records, and documents of the licensee, and may examine
12 the licensee's officers, directors, employees, or agents
13 under oath regarding the licensee's operations. ~~The~~
14 ~~commissioner may cooperate with any agency of the state~~
15 ~~or federal government, other states, agencies, the federal~~
16 ~~national mortgage association, or the federal home loan~~
17 ~~mortgage corporation. The commissioner may accept an~~
18 ~~examination conducted by one of these entities in place~~
19 ~~of an examination by the commissioner under this law,~~
20 ~~unless the commissioner determines that the~~
21 ~~examination does not provide information necessary to~~
22 ~~enable the commissioner to fulfill his or her~~
23 ~~responsibilities under this division.~~

24 (b) *In conducting the audit required by this section,*
25 *the commissioner shall, to the greatest extent possible,*
26 *avoid duplicating all or part of a contemporaneous audit*
27 *conducted by an agency of the federal government, other*
28 *state regulators, Fannie Mae, or Freddie Mac. The*
29 *commissioner shall accept all or part of an examination*
30 *conducted by one of these entities unless the*
31 *commissioner determines that the examination is*
32 *inaccurate or otherwise unreliable, or fails to provide*
33 *information necessary to enable the commissioner to*
34 *fulfill his or her responsibilities under this division.*

35 (c) *The commissioner shall accept, in lieu of an*
36 *examination by the commissioner of servicing accounts*
37 *maintained by a mortgage loan servicer on behalf of*
38 *institutional investors, an audit of those accounts*
39 *conducted by the licensee's independent certified public*
40 *accountant, provided the audit is conducted pursuant to*



1 *procedures approved by the United States Department*
2 *of Housing and Urban Development (HUD), and is*
3 *found by HUD to satisfy its audit standards. Nothing in*
4 *this section shall prevent the commissioner from*
5 *conducting his or her own examination of the licensee's*
6 *servicing accounts if the commissioner has reason to*
7 *believe, based upon a review of the accountant's report*
8 *or other facts known to the commissioner, that the*
9 *licensee is conducting its servicing operations in violation*
10 *of this division.*

11 (d) The commissioner shall provide a written
12 statement of the findings of the examination, issue a copy
13 of that statement to each licensee's principals, officers, or
14 directors, and take appropriate steps to ensure correction
15 of any violations of this division.

16 ~~(e)~~

17 (e) Affiliates of a licensee are subject to examination
18 by the commissioner on the same terms as the licensee,
19 but only when reports from, or examination of, a licensee
20 provides documented evidence of unlawful activity
21 between a licensee and affiliate benefiting, affecting, or
22 arising from the activities regulated by this division.

23 ~~(d)~~

24 (f) The licensee shall pay, and the commissioner shall
25 assess, the reasonable expenses of a nonroutine regulatory
26 examination of the licensee and affiliates.

27 ~~(e)~~

28 (g) The statement of the findings of an examination
29 shall belong to the commissioner and shall not be
30 disclosed to anyone other than the licensee, law
31 enforcement officials, or other state or federal regulatory
32 agencies for further investigation and enforcement.
33 Reports required of licensees by the commissioner under
34 this division and results of examinations performed by the
35 commissioner under this division are the property of the
36 commissioner.

37 SEC. 3. Section 50306 of the Financial Code is
38 amended to read:

39 50306. The commissioner may order a licensee that
40 opens a branch office in this state or changes its business



1 location or its locations from which activities subject to
 2 this law are conducted, without first ~~obtaining the~~
 3 ~~approval of~~ *notifying* the commissioner, to forfeit to the
 4 people of the state up to one hundred dollars (\$100) each
 5 day for the first 10 days and ten dollars (\$10) for each day
 6 thereafter during which the branch office or changed
 7 location is maintained without ~~authority~~ *notification*.

8 SEC. 4. Section 50401 of the Financial Code is
 9 amended to read:

10 50401. (a) In addition to other fees and
 11 reimbursements required to be paid under this division,
 12 each licensee shall pay to the commissioner an amount
 13 equal to the greater of: (1) its pro rata share of all costs
 14 and expenses (including routine regulatory
 15 examinations, overhead, and the maintenance of a
 16 prudent reserve of at least 90 days' costs and expenses)
 17 that the commissioner reasonably expects to incur in the
 18 next fiscal year in the administration of this division and
 19 not otherwise recovered by the commissioner under this
 20 division or from the State Corporations Fund, plus a
 21 deficit or less a surplus actually incurred during the
 22 current fiscal year; or (2) five thousand dollars (\$5,000).
 23 The pro rata share shall be the sum of: (A) a number
 24 derived from the ratio of the aggregate principal amount
 25 of the mortgage loans secured by residential real
 26 property originated by the licensee to all mortgage loans
 27 secured by residential real property originated by all
 28 licensees under this division, as shown by the annual
 29 financial reports to the commissioner, which number is
 30 then multiplied by one-half of the costs and expenses
 31 estimated by the commissioner for the next fiscal year;
 32 plus (B) a number derived from the ratio of the average
 33 value of mortgage loans secured by residential real
 34 property serviced by a licensee to the average value of all
 35 mortgage loans secured by residential real property
 36 serviced by all licensees under this division, as shown by
 37 the annual financial reports to the commissioner, which
 38 number is then multiplied by one-half of the costs and
 39 expenses estimated by the commissioner for the next
 40 fiscal year. For the purposes of this section, the "principal



1 amount” of a mortgage loan means the initial total
2 amount a borrower is obligated to repay the lender and
3 the “average value” of loans serviced means the sum of
4 the aggregate dollar value of all mortgage loans secured
5 by residential real property serviced by a licensee,
6 calculated as of the last day of each month in the calendar
7 year just ended, divided by 12.

8 In order for the commissioner to calculate the
9 assessment under this section, each licensee shall file an
10 annual report for the calendar year just ended containing
11 the information required by the commissioner on or
12 before March 1 of the year in which the assessment is to
13 be calculated.

14 The assessment shall be fixed by the commissioner by
15 notice to all licensees on or before May 30 of each year;
16 ~~commencing with the assessment for the 1996-97 fiscal~~
17 ~~year.~~

18 In determining the amount assessed, the commissioner
19 shall consider all appropriations from the State
20 Corporations Fund for the support of this division and all
21 reimbursements provided for under this division.

22 ~~The maximum assessment of a licensee for each budget~~
23 ~~year beginning with the 1995-96 budget year and ending~~
24 ~~with the conclusion of the 1999-2000 budget year shall be~~
25 ~~one hundred thousand dollars (\$100,000). However, the~~
26 ~~maximum assessment of a licensee may be increased by~~
27 ~~five percent each budget year subsequent to the 1995-96~~
28 ~~budget year. Any amount in excess of the maximum~~
29 ~~assessment authorized by this section shall be~~
30 ~~immediately assessed pro rata on those licensees whose~~
31 ~~assessments are less than the maximum assessment~~
32 ~~amount.~~

33 (b) In no case shall the reimbursement, payment, or
34 other fee authorized by this section exceed the cost,
35 including overhead, reasonably incurred in the
36 administration of this division, and the maintenance of a
37 prudent reserve of 90 days’ costs and expenses.

38 ~~(c) Notwithstanding subdivisions (a) and (b), the~~
39 ~~commissioner is authorized to levy a special assessment~~
40 ~~for the period of July 1, 1995, through June 30, 1996, to pay~~



1 the costs and expenses, including overhead, and to
2 provide a prudent reserve of 90 days' costs and expenses;
3 reasonably estimated by the commissioner to be incurred
4 during the period of July 1, 1995, through June 30, 1996,
5 as follows:

6 (1) The special assessment shall be calculated
7 pursuant to the provisions of subdivision (a) of this
8 section, based on the information filed by the licensee
9 with the notice of intent to file an application described
10 below:

11 (2) An applicant filing an application for licensure as
12 a residential mortgage lender or for licensure as a
13 residential mortgage loan servicer during the month of
14 September 1995 shall have paid the application filing fee
15 required by subdivision (e) of Section 50121 in the case
16 of a residential mortgage lender, or the application filing
17 fee required by paragraph (2) of subdivision (b) of
18 Section 50130 in the case of a residential mortgage loan
19 servicer at the time of filing the application, and shall
20 have paid the special assessment calculated under this
21 subdivision at the time the application is filed. These
22 moneys shall be deposited into the State Corporations
23 Fund. If the commissioner denies an application for
24 licensure filed during the month of September 1995, the
25 applicant is entitled to receive a ratable return on a
26 monthly basis of the special assessment paid,
27 commencing with the month after the month in which
28 the application was denied. The commissioner shall pay
29 the ratable return of the special assessment on the first
30 business day of the next fiscal year.

31 An applicant who files a notice of intention to file an
32 application for licensure as a residential mortgage lender
33 or residential mortgage loan servicer, or filing an
34 application for licensure as a residential mortgage lender
35 or residential mortgage loan servicer, after September 30,
36 1995, and on or before June 30, 1996, shall comply with the
37 provisions of paragraph (1), and shall be subject to the
38 provisions of paragraph (2), of subdivision (e) of this
39 section. However, an application for licensure as a
40 residential mortgage lender or residential mortgage loan



1 ~~servicer filed after September 30, 1995, and on or before~~
2 ~~June 30, 1996, shall be processed on a first-filed,~~
3 ~~first-processed basis after all applications filed during the~~
4 ~~month of September 1995 have been processed.~~

5 ~~A residential mortgage loan servicer shall not file an~~
6 ~~application for licensure during the month of September~~
7 ~~1995, unless the residential mortgage loan servicer files~~
8 ~~with the Commissioner of Corporations, on or before~~
9 ~~March 1, 1995, a notice of intention to file an application~~
10 ~~as a residential mortgage servicer, accompanied by the~~
11 ~~application filing fee, and an annual unaudited financial~~
12 ~~report for calendar year 1994 meeting the requirements~~
13 ~~of Section 50401.~~

14 ~~(d) Commencing in 1996, on~~ On or before the 30th day
15 of May in each year, the commissioner shall notify each
16 licensee by mail of the amount assessed and levied against
17 it and that amount shall be paid within 20 days. If
18 payment is not made within 20 days, the commissioner
19 shall assess and collect a penalty, in addition to the
20 assessment of 1 percent of the assessment for each month
21 or part of a month that the payment is delayed or
22 withheld.

23 *(d) Notwithstanding subdivision (a), if the average*
24 *assessment estimated for the next fiscal year exceeds the*
25 *average assessment for the prior fiscal year by 10 percent*
26 *or more, the increase shall be specifically approved by the*
27 *Legislature as part of the department's budget*
28 *appropriation for the next fiscal year.*

29 (e) If a licensee fails to pay the assessment on or before
30 the 30th day of June following the day upon which
31 payment is due, the commissioner may by order
32 summarily suspend or revoke the license issued to the
33 licensee. An order issued under this section is not stayed
34 by the filing of a request for a hearing. If, after an order
35 is made, the request for hearing is filed in writing within
36 15 days from the date of service of the order and a hearing
37 is not held within 60 days of the filing, the order is deemed
38 rescinded as of its effective date. During a period when
39 its license is revoked or suspended, a licensee shall not
40 conduct business pursuant to this division except as may



1 be permitted by further order of the commissioner.
2 However, the revocation, suspension, or surrender of a
3 license shall not affect the powers of the commissioner as
4 provided in this division.

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