



Bankers Advisory

COMPLIANCE MONITOR

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Changes under the California Finance Lenders Law and California Residential Mortgage Lending Act

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The California Department of Business Oversight adopted provisions under the Finance Lenders Law and Residential Mortgage Lending Act that provides that certain non-depository lenders, brokers and servicers who are subsidiaries and affiliates of depository institutions are not exempt from licensure when engaged in the business of originating, brokering or servicing consumer loans. These provisions become operative on September 28, 2016.

The California Finance Lenders Law requires licensing and regulation of finance lenders and brokers who make and broker consumer and commercial loans. The California Residential Mortgage Lending Act provides mortgage bankers with a licensing law intended to regulate the primary functions of originating and servicing residential mortgage loans.

Consumer Lenders and Brokers

Adopted provision 1422.3 states a non-depository lender or broker engaged in the business of making or brokering consumer loans in California is not exempt from licensure. Non-depository "lender or broker" is defined in the Financial Code section 22009. The Financial Code defines finance lender as any person who is engaged in the business of making consumer loans or making commercial loans. The Financial Code section 22004 defines broker as 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.

California's adopted provision section 1422.3 provides exemptions of licensure for non-depository lenders or brokers that are either of the following:

- a. Bank,
- b. Trust Company,
- c. Savings and Loan Association,
- d. Insurance Premium Finance Agency,
- e. Credit Union,
- f. Small Business Investment Company,
- g. Community Advantage Lender,
- h. California Business and Industrial Development Corporation when acting under federal law or other state authority, or
- i. Licensed Pawnbroker when acting under the authority of that license.

Residential Mortgage Lenders and Servicers

Adopted provision section 1950.122.4.2 states a non-depository lender or servicer that engages in the business of mortgage or servicing in this state is not exempt from licensure. The Financial Code section 50003 (m) defines "lender" as a person who directly makes residential mortgage loans, and makes the credit decision in the loan transaction. This person must be an approved lender for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation. Subsection (g) of the same code section 50003 defines "lender or mortgage servicer" as someone who is engaged in the business, without limitation to making residential mortgage loans or servicing residential mortgage loans, or both.

The adopted provision section 1950.122.4.2 provides exemptions to non-depository lenders or servicers that are either of the following:

- a. Bank,
- b. Trust Company,
- c. Insurance Company, or
- d. Industrial Loan Company doing business under the authority of, or in accordance with, a license, certificate or charter.

