

September 30, 2013

TO THE INDIVIDUAL OR INSTITUTION ADDRESSED

Re: Emergency Adoption of Part 42 of the Superintendent's Regulations (adjustment of the subprime threshold)

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The Superintendent has adopted Part 42 of the Superintendent's Regulations on an emergency basis, effective immediately.

Section 6-m of the Banking Law provides for the regulation of subprime home loans as defined in the statute. In doing so, the statute incorporates the federal concept of Annual Percentage Rate ("APR"), as defined in the Federal Truth-in-Lending Act, for determining whether a home loan is deemed subprime. Loans with a fully-indexed rate (as defined in the statute) above a specified threshold are defined as subprime loans.

Section 6-m defines a subprime home loan as a loan with an initial interest rate or the fully-indexed rate, whichever is higher, that exceeds a certain threshold (herein, the "subprime threshold"). Section 6-m sets the subprime threshold at (1) the average commitment rate for loans with a comparable duration as set forth in Freddie Mac's Weekly Primary Mortgage Survey ("PMMS"), plus (2) 1.75 percentage points for a first-lien loan, or 3.75 percentage points for a subordinate-lien loan.

In Mortgagee Letter 2013-04, the Federal Housing Administration (the "FHA") revised the period for assessing the annual Mortgage Insurance Premium ("MIP") for FHA-insured loans, effective June 3, 2013 (the "FHA rule change"). Because MIP is part of the APR calculation, the rule change has caused the APR on many FHA-insured loans to increase, resulting in significantly more FHA-insured loans exceeding the subprime threshold. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State.

Based on a financial analysis and an assessment of market conditions, the Superintendent has determined that the FHA rule change has effectively decreased the threshold on certain loans; as a result, the existing subprime threshold in Section 6-m is having an unduly negative effect on the availability of mortgage financing in New York State.

Accordingly, the Superintendent is adjusting the subprime threshold by 75 basis points (0.75%) for FHA-insured loans, excluding (1) Title I Home Improvement Loans, (2) Home Equity Conversion Mortgage, and (3) any FHA-insured loans that would have exceeded the subprime threshold prior to the effective date of the FHA rule change (herein, the "adjusted subprime threshold"). Consequently, the adjusted subprime threshold for covered FHA-insured loans is (1) the average commitment rate for loans with a comparable duration as set forth in Freddie Mac's Weekly Primary Mortgage Survey ("PMMS"), plus (2) 2.5 percentage points for a first-lien loan, or 4.5 percentage points for a subordinate-lien loan.

The following decision tree explains how to determine if a home loan qualifies as a subprime home loan under Emergency Regulation Part 42:

1. Does the initial interest rate or the fully-indexed rate, whichever is higher, exceed the subprime threshold currently set forth in Banking Law Section 6-m?
  - a. If NO → the loan is not subprime.
  - b. If YES → continue to Question 2.
2. Will the home loan be insured by the FHA?
  - a. If NO → the loan is subprime (it remains subject to the subprime threshold currently set forth in Banking Law Section 6-m).
  - b. If YES → continue to Question 3.
3. Is the loan a Title I Home Improvement Loan or a Home Equity Conversion Mortgage?
  - a. If NO → continue to Question 4.
  - b. If YES → the loan is subprime (it remains subject to the subprime threshold currently set forth in Banking Law Section 6-m).
4. Does the initial interest rate or the fully-indexed rate, whichever is higher, exceed the adjusted subprime threshold set forth in Emergency Regulation Part 42?
  - a. If NO → continue to Question 5.
  - b. If YES → the loan is subprime.
5. Prior to the FHA rule change, would the initial interest rate or the fully-indexed rate, whichever is higher, have exceeded the subprime threshold currently set forth in Banking Law Section 6-m?
  - a. If NO → the loan is not subprime.
  - b. If YES → the loan is subprime.

The Notice of Emergency Adoption is expected to be published in the October 16, 2013 issue of the State Register.

Comments should be sent to Harry Goberdhan, Assistant Counsel, Department of Financial Services, One State Street, New York, NY 10004 or by email to [harry.goberdhan@dfs.ny.gov](mailto:harry.goberdhan@dfs.ny.gov).

Very truly yours,

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