

**TITLE 3. BANKING DIVISION
CHAPTER I. SUPERINTENDENT'S REGULATIONS**

PART 42. SUBPRIME HOME LOANS – THRESHOLDS

(Statutory authority: Banking Law §6-m; Financial Services Law §302)

Sec.

§ 42.1 Background

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§ 42.3 Effective Date

§ 42.1 Background.

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 (a calculation correlated with APR) above a specified threshold are defined as subprime loans.

The term “fully-indexed rate” is defined in Section 6-m(1)(b) to mean “(i) for an adjustable rate loan based on an index, the annual percentage rate calculated using the index rate on the loan on the date the lender provides the ‘good faith estimate’ required under 12 USC §2601 et seq. plus the margin to be added to it after the expiration of any introductory period or periods; or (ii) for a fixed rate loan, the annual percentage rate on the loan disregarding any introductory rate or rates and any interest rate caps that limit how quickly the contractual interest rate may be reached calculated at the time the lender issues its commitment.”

Section 6-m defines a subprime home loan as a loan in which the initial interest rate or the fully-indexed rate, whichever is higher, exceeds by more than one and three-quarters percentage points for a first-lien loan, or by more than three and three-quarters percentage points for a subordinate-lien loan, the average commitment rate for loans with a comparable duration of such home loan as set forth in an index provided by the Federal Home Loan Mortgage Corporation for the date as specified in the statute (the first-lien threshold and subordinate-lien threshold, collectively, the “subprime threshold”).

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 such that, in certain cases, MIP is required to be paid over the life of the loan, effective June 3, 2013. Because MIP is part of the APR calculation, the FHA's revised policy 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.

Section 6-m anticipated the need to adjust the statute's established subprime threshold under certain circumstances. Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the threshold, stating, "(n)otwithstanding the comparable rates set forth in this paragraph, and notwithstanding any other law, if . . . the provisions of this section have had an unduly negative effect upon the availability or price of mortgage financing in this state, the superintendent may from time to time designate such other threshold rates as may be necessary . . . to alleviate such unduly negative effects."

Based on a financial analysis and an assessment of market conditions, the Superintendent has determined that FHA Mortgagee Letter 2013-04 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. The Superintendent has further determined to use the authority provided by Section 6-m to promulgate this regulation to restore the availability of mortgage financing to New York State residents.

Accordingly, as set forth in Part 42.2 below, the Superintendent is adjusting the subprime threshold by 75 basis points, or 0.75%, to restore the availability of mortgage financing to approximately the levels predating the effective date of FHA Mortgagee Letter 2013-04, subject to the specifications set forth in § 42.2.

§ 42.2 Adjustment of Subprime Threshold.

(a) Threshold Adjustment. Notwithstanding the subprime threshold currently set forth in Banking Law Section 6-m, and subject to the exclusions set forth in subdivision (b), a subprime home loan, if insured by the FHA, means a home loan in which the initial interest rate or the fully-indexed rate, whichever is higher, on the loan exceeds by more than two-and-a-half percentage points for a first-lien loan, or by more than four-and-a-half percentage points for a subordinate-lien loan, the average commitment rate for such loans in the northeast region with a comparable duration to the duration of such home loan, as published by the Federal Home Loan Mortgage Corporation (herein "Freddie Mac") in its weekly Primary Mortgage Market Survey (PMMS) posted in the week prior to the week in which the lender provides the "good faith estimate" required under *12 USC § 2601 et seq.*"

(b) Exclusions:

(1) The following types of FHA-insured loans are excluded from the threshold adjustment in subdivision (a), and instead are examined in accordance with the threshold currently set forth in Banking Law Section 6-m:

- i. Title I Home Improvement Loans;
- ii. Home Equity Conversion Mortgages; and
- iii. Any loan in which the fully-indexed rate, calculated using the FHA MIP policies that were in effect immediately prior to the effectiveness of Mortgagee Letter 2013-04, exceeds the unadjusted subprime threshold.

(2) All home loans other than FHA-insured loans are excluded from the threshold adjustment in subdivision (a), and instead are examined in accordance with the threshold currently set forth in Banking Law Section 6-m.

§ 42.3 Effective Date.

This Part shall be effective immediately.