



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Benjamin M. Lawsky  
Superintendent

July 3, 2013

TO THE INDIVIDUAL OR INSTITUTION ADDRESSED:

Re: Determination of Subprime Home Loans under Section 6-m of the New York Banking Law

In light of recent changes in interest rates in the mortgage market, the Department of Financial Services (the "Department") is issuing the following guidance regarding the proper reading of the provisions of Section 6-m of the Banking Law.

The Department understands that this increase in rates when combined with the practice of some lenders to utilize the closing date of a loan as the time period for determining the "fully indexed rate" could potentially cause some loans to be deemed subprime loans within the meaning of Section 6-m of the Banking Law. The purpose of this letter is to remind lenders that Section 6-m was amended in 2009 to address this potential issue.

In 2009, Section 6-m of the Banking Law was amended to ensure a more timely determination of a home loan's status as a Subprime Home Loan. Specifically, Section 6-m(1)(b) was amended to provide that the "fully-indexed rate" for purposes of determining whether an adjustable rate or fixed rate mortgage loan was a subprime loan was defined as follows:

**For an Adjustable Rate Mortgage Loan**

"the annual percentage rate calculated using the index rate on the loan on the date the lender provides the "good faith estimate" . . . plus the margin to be added to it after the expiration of any introductory period or periods".

**For a Fixed Rate Mortgage 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."

The Department believes that the proper application of the definitions for determining the fully indexed rate for a loan should alleviate, if not eliminate, the stresses that some lenders may have been experiencing in recent weeks.

Should you have any further questions regarding this matter, please contact me at (212) 709- 5540.

Sincerely,

Rhoda L. Ricketts  
Deputy Superintendent