



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Shirin Emami  
Acting Superintendent

**TO:** All DFS-Regulated Lending Institutions

**FROM:** Shirin Emami, Acting Superintendent of Financial Services

**RE:** The Primary Mortgage Market Survey and Subprime Lending in New York

**DATE:** January 19, 2016 [Updated January 22, 2016]

The Federal Home Loan Mortgage Corporation (“FreddieMac”) recently announced that, as of January 1, 2016, it would no longer publish regional breakout figures in its weekly Primary Mortgage Market Survey (“PMMS”) for the 30-year fixed rate mortgage, the 15-year fixed rate mortgage, and the 5/1 hybrid adjustable rate mortgage, and would no longer provide figures for the 1-year adjustable rate mortgage (“1-year ARM”). Section 6-m of the New York Banking Law (the “Banking Law”) references FreddieMac’s breakout figures for the northeast region when determining whether a home loan qualifies as “subprime” in the State of New York. Such “subprime” designation triggers certain legal and regulatory obligations for lending institutions.

In light of FreddieMac’s decision to stop publishing regional breakout figures, lending institutions in New York may be unable to determine whether certain of their lending practices comply with applicable laws and regulations for subprime lending, a condition which may threaten to have unduly negative effects on the availability of mortgage financing in the State. In these circumstances, Section 6-m(1)(c)(ii) of the Banking Law authorizes the Superintendent to “designate such other threshold rates as may be necessary to . . . alleviate such unduly negative effects.”

Accordingly, after careful analysis and consideration, the Superintendent hereby designates the FreddieMac PMMS average commitment rate for loans in the United States as the appropriate threshold for determining which loans qualify as “subprime home loans” under Section 6-m of the Banking Law. The nominal variance between the average national and northeast regional rates renders the PMMS average national rate the most suitable substitute for the northeast regional rate when calculating the subprime threshold under Section 6-m of the Banking Law.

Because FreddieMac no longer publishes either the average regional or national breakout figures for 1-year ARMs, the Superintendent hereby designates the most recent 1-year adjustable Average Prime Offer Rate, as published by the Federal Financial Institutions Examination Council, as the appropriate metric for calculating the subprime threshold for loans with a fixed rate of less than three years.

This guidance is retroactive to January 8, 2016, the first date on which there was no current PMMS report for the northeast region.

The Superintendent will make conforming revisions to applicable regulations in the near future.

Please contact Jeremy Schildcrout at DFS at (212) 709-3572 (or [Jeremy.Schildcrout@dfs.ny.gov](mailto:Jeremy.Schildcrout@dfs.ny.gov)) with questions or for further guidance.