

December 16, 2022 (Revised December 20, 2022)

To: All Institutions Engaged in Mortgage Lending in New York State

Re: New York Subprime Law Requirement and Discontinued Publication of the Primary Mortgage Market Survey Rate for 5/1 Adjustable Rate Mortgage Loans.

Pursuant to Section 6-m of the New York Banking Law (the “Banking Law”), lending institutions must use the weekly Primary Mortgage Market Survey (“PMMS”), published by the Federal Home Loan Mortgage Corporation (“Freddie Mac”), for loans that are comparable to the term of the underlying loan, to assess whether a home loan qualifies as “subprime” in New York.¹¹ If a loan is determined to be “subprime,” Banking Law Section 6-m imposes additional legal and regulatory obligations on a lending institution making a subprime loan.

On November 17, 2022, Freddie Mac discontinued publication of its weekly PMMS average commitment rate for loans in the United States for the 5/1 adjustable rate mortgage (“ARM”). Freddie Mac’s decision to stop publishing figures for the 5/1 ARM has disrupted the ability of lending institutions to determine whether a residential mortgage loan with a comparable duration to the 5/1 ARM is a subprime home loan. The resulting inability to ensure compliance with the requirements of Section 6-m has made it impossible for lending institutions to offer this loan product in New York, limiting the availability of certain mortgage financing for consumers in New York.

To ensure mortgage financing is available in New York, and avoid the disruption caused by the discontinuance of the PMMS survey for 5/1 ARMs, 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 Average Prime Offer Rate (“APOR”) for 5/1 ARMs, as published by the Federal Financial Institutions Examination Council, as the replacement benchmark lending institutions shall use for calculating the subprime threshold for adjustable or variable rate loan with an initial rate that is fixed for at least three years pursuant Section 6-m of the Banking Law.

This guidance is retroactive to November 17, 2022, the first day on which Freddie Mac ceased publication of the PMMS 5/1 ARM rate.

Please contact Rholda Ricketts at DFS at (212) 709-5540 (or rholda.ricketts@dfs.ny.gov) with questions or for further guidance.

^[1] By Industry Letter dated January 19, 2016, the Department authorized lenders to utilize Freddie Mac’s PMMS average commitment rate for loans in the United States as the appropriate threshold for the 5/1 ARM in determining which mortgage loans qualify as “subprime home loans” under section 6-m after Freddie Mac stopped publishing its regional survey.

Source: NYDFS Website, Industry Guidance, December 16, 2022, and revised December 20, 2022, https://www.dfs.ny.gov/industry_guidance/industry_letters/il202211216_subprime_discontinuance_pmms_arm