

# LENDERS COMPLIANCE GROUP

*“Converting Risk to Opportunity”*

## ADVISORY BULLETIN

**September 2, 2008**

### **GSEs WILL NOT PURCHASE NYS SUBPRIME HOME LOANS**

On August 5, 2008, Governor David A. Patterson signed into law the Subprime Lending Reform Bill (“subprime law”).<sup>1</sup> The subprime law creates a new class of mortgages called “subprime home loans.” Although the new law targets the subprime lending crisis by providing assistance to homeowners currently at risk of losing their homes and by establishing further loan origination requirements, it also creates the potential for heightened legal and business risk exposures for purchasers or assignees of these loans.

Freddie Mac announced on August 12, 2008 that it will not purchase New York mortgages with Note Dates on or after September 1, 2008 that fall within the law’s definition of “subprime home loans.”<sup>2</sup>

Fannie Mae announced on August 19, 2008 that, effective September 1, 2008, it will not purchase or securitize any mortgage loan that meets the definition of a “subprime home loan” under New York law, regardless of whether any provision of the law is preempted by federal law with respect to a particular mortgage or for a particular originator.<sup>3</sup>

A “subprime home loan” is defined in Chapter 472 of the Laws of New York in a new section 6-m<sup>4</sup> as a home loan with a fully-indexed annual percentage rate (APR) that exceeds by more than 175 basis points (1.75%) for a first-lien loan, or by more than 375 basis points (3.75%) for a subordinate-lien loan, the average commitment rate for loans in the northeast region with a comparable duration as published in the weekly Freddie Mac Primary Mortgage Market Survey (PMMS) in the week prior to the week in which the lender received a completed loan application.<sup>5</sup>

The Primary Mortgage Market Survey® (“PMMS”) can be found at the following webpage:

<http://www.freddiemac.com/dlink/html/PMMS/display/PMMSOutputYr.jsp>.

A “subprime home loan” would trigger the new standards if the principal amount is equal to or below the conforming loan size limit established by Fannie Mae. The following table provides the new law’s elements, with brief synopses and effective dates. This legislation is extensive and requires careful review and meticulous implementation.

<sup>1</sup> New York State: Senate 8143-A, Assembly 10817-A.

<sup>2</sup> FHLMC: Bulletin, August 12, 2008: “New York Subprime Home Loan Mortgages”

<sup>3</sup> FNMA: Announcement 08-21, August 19, 2008: “Purchase of New York “Subprime Home Loans”

<sup>4</sup> Chapter 472 § 6-m, Laws of New York State.

<sup>5</sup> Lenders Compliance Group: Advisory Bulletin, July 28, 2008, “FRB Finalizes Revision to Regulation Z (Truth in Lending),” and Advisory Bulletin, July 30, 2008, “FRB Proposes Revision to Regulation C (HMDA)” Each of these Advisory Bulletins provide information regarding the PMMS.

**SUBPRIME LENDING REFORM BILL  
NEW YORK STATE  
AUGUST 5, 2008**

**NOTE:** This table is an overview and outline. It is a general synopsis and it is not comprehensive. The information contained in the table is not intended to be and is not a source of legal advice. For further guidance, we suggest you contact Lenders Compliance Group or your compliance professional.

<b>PROVISION</b>	<b>SYNOPSIS</b>	<b>EFFECTIVE DATE</b>
<b>Pre-Foreclosure Notice</b>	Requires a notice to borrowers of high-cost home loans, subprime home loans and non-traditional home loans at least 90 days before the lender may commence legal action against the borrower. The lender will be required to list in the notice the names and telephone numbers of at least five HUD-approved housing counselors or other housing counseling agencies designated by the Division of Housing and Community Renewal (DHCR) serving the region where the borrower resides.	<b>September 1, 2008</b>
<b>Foreclosure Notice</b>	This provision revises the notice that the foreclosing party must provide to the mortgagor of any owner-occupied 1-to-4 family dwelling, not only those that are subprime home loans.	<b>September 1, 2008</b>
<b>Mandatory Settlement Conference</b>	Requires a court in a residential foreclosure action to schedule a settlement conference with the parties to a foreclosure action within 60 days of when the plaintiff files a proof of service of the complaint.	<b>August 5, 2008</b>
<b>Affirmative Allegation of Ownership</b>	Requires the plaintiff in an action to foreclose a high-cost or subprime home loan to make an affirmative allegation in the complaint that (i) the plaintiff is the holder of the note and mortgage at the time the action is commenced, or has been delegated the authority to institute an action against the homeowner by the holder of the note and mortgage, and (ii) the mortgage complies with the underwriting standards in § 6-m of the Banking Law, as well as the pre-foreclosure notice requirements.	<b>September 1, 2008 (Actions commenced on or after)</b>

<p style="text-align: center;"><b>Rescue Scams</b></p>	<p>Prohibits distressed property consultants from: (1) performing any services for the homeowner without a written contract; (2) charging or accepting fees without first completing the service; and (3) taking power of attorney from a homeowner, except under very limited circumstances. Strict standards for contracts are required, including providing homeowners with the right to cancel the consulting contract within five business days of consummation.</p>	<p style="text-align: center;"><b>September 1, 2008</b></p>
<p style="text-align: center;"><b><i>New Class of Mortgage Loans: "Subprime Home Loans"</i></b></p>	<p>The law creates a new class of mortgages called "subprime home loans." [These standards are in a new section of the Banking Law, § 6-m, to distinguish them from the state's existing anti-predatory lending law, § 6-l, which governs "high-cost" mortgages.]</p> <p>Definition: A home loan - owner occupied and/or loan proceeds to be used for personal, family, or household purposes; 1-4 family; includes open-end credit plans; excludes reverse mortgages - with a fully-indexed annual percentage rate that exceeds by more than 175 basis points for a first-lien loan, or by more than 375 basis points for a subordinate-lien loan, the average commitment rate for loans in the northeast region with a comparable duration as published in the weekly Freddie Mac Primary Mortgage Market Survey (PMMS) in the week prior to the week in which the lender received a completed loan application. A subprime home loan would trigger the new standards if the principal amount is equal to or below the conforming loan size limit established by Fannie Mae.</p>	<p style="text-align: center;"><b>September 1, 2008 (Loans consummated on or after)</b></p>

<p style="text-align: center;"><b>Underwriting Standards for Subprime Home Loans</b></p>	<p>Establishes an ability to pay standard for making and arranging subprime home loans. Lenders must make a reasonable and good faith determination of whether the borrower has the ability to repay the loan, including the principal, interest, taxes, insurance, assessments, points and fees, based upon the borrower's income, employment status and other financial resources. The lender must take reasonable steps to verify the accuracy of the information provided by the borrower, using reasonable methods such as tax returns, payroll receipts, and bank records.</p>	<p style="text-align: center;"><b>September 1, 2008 (Loans consummated on or after)</b></p>
<p style="text-align: center;"><b>Prohibitions for Subprime Home Loans</b></p>	<p>Provides for the following ability to pay and underwriting standards and prohibitions, among others:</p> <p>No negative amortization.</p> <p>No prepayment penalties.</p> <p>No loan flipping.</p> <p>Lender must require the escrow of taxes and insurance, although the borrower may opt out of escrow after one year.</p> <p>Lender must disclose, if known, the amount of the initial taxes and insurance payments.</p> <p>No teaser rates of less than six months' duration.</p> <p>No payments to mortgage brokers except for services actually rendered and reasonably related to the value of the services, and, in particular, no abusive yield spread premiums.</p> <p>[The mortgage broker, at the time of the application, must disclose the exact amount of the total compensation the broker will receive from any source, including the borrower and the lender. Any compensation it receives over that amount must be credited to the borrower to pay for</p>	<p style="text-align: center;"><b>September 1, 2008 (Loans consummated on or after)</b></p>

	<p>closing costs (i.e., the borrower may use a yield spread premium to offset upfront costs, as long as any compensation to the broker from the lender that exceeds the amount of broker compensation agreed to by the borrower is credited to the borrower.]</p>	
<p><b>Duty of Care for Mortgage Brokers</b></p>	<p>Establishes a general duty of care for mortgage brokers with regard to <b>all</b> home loans, such as to (among other things): (1) act in the borrower's interest; (2) act with reasonable care, skill and diligence; (3) act with good faith and fair dealing; (4) disclose all material facts known to the broker that might reasonably affect the borrower's rights and interests; (5) disclose all compensation; and (6) present a range of loans for which the borrower likely qualifies and which are most appropriate for the borrower's existing circumstances.</p>	<p><b>September 1, 2008</b> <b>(Loans consummated on or after)</b></p>
<p><b>Registration of Servicers</b></p>	<p>Servicers must register with the Banking Department. The law authorizes the Superintendent of Banks to adopt regulations on (i) providing for disclosures to borrowers on the basis for any interest rate resets, (ii) the provision of payoff statements; and (iii) the timing of the crediting of payments made by borrowers.</p>	<p><b>July 1, 2009</b></p>
<p><b>Mortgage Fraud</b></p>	<p>Defines and criminalizes the act of mortgage fraud and makes it easier for prosecutors to prosecute these cases. Furthermore, it provides for the escalation of criminal penalties commensurate with the level of fraud committed and allows the prosecutor to aggregate the dollar amounts of fraud to charge more for serious offenses.</p>	<p><b>November 1, 2008</b></p>
<p><b>Remedies</b></p>	<p>Establishes the following remedies:</p> <p>Any provision in a subprime home loan that violates the underwriting standards is void.</p>	<p><b>November 1, 2008</b></p>

<p style="text-align: center;"><b>Remedies</b> (Continued)</p>	<p>Actions may be brought by the Superintendent and by the Attorney General to enforce the provision of § 6m.</p> <p>A borrower may use a violation of § 6-m as a defense to payment in defense of foreclosure action. Anyone found by a preponderance of the evidence to have violated § 6-m is liable to the borrower of a subprime home loan for actual damages but not statutory damages or consequential or incidental damages.</p> <p>The defense to a foreclosure action may also be asserted against assignees.</p> <p>A mortgage broker who violates the duty of care is liable to the borrower for actual damages.</p> <p>A lender or mortgage broker who violates the prohibitions on improper influence over appraisers is liable to the borrower for actual damages.</p> <p>A mortgage broker who violates Section 590-b(1) (the broker duty of care) is liable to the borrower for actual damages.</p>	<p style="text-align: center;"><b>November 1, 2008</b></p>
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If the Superintendent of Banking determines that federal regulators have adopted different thresholds for underwriting standards or provisions of the new law have an unduly negative effect on the availability or price of mortgage financing in New York, the Superintendent may adopt other threshold rates to achieve parity between New York and nationally chartered institutions or to alleviate those unduly negative effects.

**ACTION PLAN**

Review all policies, procedures, software, and protocols for originating residential mortgage loans within conforming limits on 1-4 family New York properties, to assure compliance with the Subprime Lending Reform Bill. We can guide you through a complete review and then validate the process. For a free consultation, please contact us.

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