§ 6-f. Alternative mortgage instruments made by banks, trust companies, savings banks, savings and loan associations and credit unions. 1. Notwithstanding any inconsistent provision of this chapter or any other law of this state, the superintendent of financial services is authorized to adopt such rules or regulations as shall permit banks, trust companies, foreign banking corporations licensed to maintain a branch or agency in this state, savings banks, savings and loan associations, credit unions and persons and entities engaging in the business described in section five hundred ninety of this chapter to make residential mortgage loans and cooperative apartment unit loans which provide for (a) periodic readjustments of the rate of interest charged for the loan or successive terms of the loan or (b) terms of loan which are shorter than the term of the mortgage or (c) repayment of the principal amount of the loan by regular payments which are not equal in amount throughout the term of the mortgage or (d) the lender thereof to receive a share in the future appreciation of the property serving as security for the loan under the circumstances set forth in the following sentence or (e) any combination of paragraphs (a), (b), (c) and (d) of this subdivision, subject to the provisions of subdivision two of this section. Where the lender or holder of a residential mortgage loan or cooperative apartment unit loan enters into a written agreement with the borrower under which the lender or holder conditionally reduces an amount of principal of such loan in order to assist a borrower at risk of foreclosure to avoid such foreclosure, the lender or holder may enter into a written agreement (a "shared appreciation agreement") with the borrower under which the lender shall be entitled to share in the appreciation of the market value of the real property or cooperative shares and proprietary lease securing such loan between the effective date of such reduction in principal amount until the date when the property is sold, provided that the amount the lender is entitled to receive under such shared appreciation agreement shall be the lesser of (i) the amount of such reduction in principal, plus interest on such amount from the date of such reduction to the date of payment at the same rate of interest as applies to the remaining principal amount of the residential mortgage loan, and (ii) fifty percent of the amount of such appreciation. Such amounts shall be payable when the mortgagor sells the residential real property or cooperative shares and

proprietary lease that secure the loan. Such shared appreciation agreement shall expressly and conspicuously bear a legend at the top of the agreement in at least fourteen-point type which shall include the following: "In this agreement, you are giving away some of any future increase in value of your home. Please read carefully." For purposes of this subdivision, the appreciation of the property shall be measured as the difference, if positive, between the gross sales proceeds (net of any reasonable real estate commission) of the sale of the property and the value of the property at the time of the closing of the shared appreciation mortgage, as determined by an appraisal by an independent New York state licensed real estate appraiser. Recovery of such reduction in the principal amount shall not be deemed to be interest for any purpose of the laws of this state.

Any shared appreciation agreement shall be accompanied by a notice, which shall be on a separate page from the shared appreciation agreement and shall contain the following heading in bold, fourteen-point type: "Important disclosures about the contract in which you agree to give away a part of any future increase in value of your home. Please read carefully." The notice shall include the following disclosures:

(1) a statement that the lender will be entitled to share in any appreciation of the market value of the mortgaged property that occurs between the time of the loan modification and the time the property is sold, up to the amount of principal forborne plus interest on such amount at the applicable rate of interest on the mortgage but in no event more than fifty percent of the amount of such appreciation, and providing at least three examples of how such shared appreciation may affect the borrower at the time the borrower sells the mortgaged property, such examples to include (A) no appreciation in the value of the mortgaged property, (B) appreciation of twenty percent and (C) appreciation of fifty percent;

(2) a statement advising the borrower to seek independent counseling from a lawyer, a HUD-certified mortgage counselor or a tax advisor regarding (A) the trade-off between a current reduction in the size of the mortgage, versus the promise to give up part of the future appreciation of the home, and (B) the tax consequences of the principal forgiveness and shared appreciation agreement, and providing a list of

the names and contact information of five HUD-certified mortgage counselors in the county where the mortgaged property is located or, if there are fewer than five such counselors in that county, the list may include counselors in one or more neighboring counties;

(3) a statement on the potential effect of the shared appreciation agreement on any future refinancing of the mortgage and the potential effect of any prepayment or refinancing of the mortgage on the appreciation sharing agreement; and

(4) such other disclosures as the superintendent of financial services may require.

2. Any rules or regulations which are adopted by the superintendent of financial services pursuant to subdivision one of this section:

(a) shall provide for disclosures and notices to the borrower with respect to the terms and conditions of the loan and the mortgage, and the superintendent of financial services may require the adoption of uniform disclosure and notice forms for this purpose;

(b) shall provide for the conditions governing renewals of the term of the loan;

(c) shall not permit any uninsured loan secured by residential real property to be made in an amount exceeding ninety percent of the appraised value of the property; and

(d) shall not allow, with respect to any specific alternative mortgage instrument which permits a periodic readjustment of the rate charged on the loan, for a greater change in rate than that permitted under federal law or regulations to federally-chartered banking organizations located in this state for loans made pursuant to an equivalent alternative mortgage instrument.