§ 6-m. Subprime home loans. 1. Definitions. The following definitions apply for the purposes of this section:

(a) "Annual percentage rate" means the annual percentage rate for the loan calculated according to the provisions of the Federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated thereunder by the federal reserve board (as said act and regulations are amended from time to time).

(b) "Fully indexed rate" means: (i) for an adjustable rate loan based on an index, the annual percentage rate calculated using the index rate on the loan on the date the lender provides the "good faith estimate" required under 12 USC §2601 et seq. plus the margin to be added to it after the expiration of any introductory period or periods; or (ii) for a fixed rate 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.

(c) "Subprime home loan" means a home loan in which the initial interest rate or the fully-indexed rate, whichever is higher, exceeds by more than one and three-quarters percentage points for a first-lien loan, or by more than three and three-quarters percentage points for a subordinate-lien loan, the average commitment rate for loans in the northeast region with a comparable duration to the duration of such home loan, as published by the Federal Home Loan Mortgage Corporation (herein "Freddie Mac") in its weekly Primary Mortgage Market Survey (PMMS) posted in the week prior to the week in which the lender provides the "good faith estimate" required under 12 USC §2601 et seq. The term "subprime home loan" excludes a transaction to finance the initial construction of a dwelling, i.e., a construction only loan, a temporary or "bridge" loan with a term of twelve months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within twelve months, or a home equity line of credit but shall include any loan, however structured, that thereafter is converted into a permanent loan.

(i) The comparable duration for a home loan shall be determined as follows: for an adjustable or variable home loan with an initial rate that is fixed for less than three years, the Freddie Mac survey result for a one-year adjustable rate mortgage; for an adjustable or variable

home loan with an initial rate that is fixed for at least three years, the Freddie Mac survey result for a five-year hybrid adjustable rate mortgage; for a fixed rate home loan with a term of fifteen years or less, the Freddie Mac survey result for a fifteen-year fixed rate mortgage; and for a fixed rate home loan with a term of more than fifteen years, the Freddie Mac survey result for a thirty-year fixed rate mortgage. The superintendent may prescribe by regulation a different comparable duration standard as necessary or appropriate to reflect changes in the terms and types of mortgages included in the Freddie Mac survey.

(ii) Notwithstanding the comparable rates set forth in this paragraph, and notwithstanding any other law, if the superintendent determines that by statute, rule or regulation, different thresholds for determining underwriting standards for subprime loans become applicable to nationally chartered lending institutions, or the provisions of this section have had an unduly negative effect upon the availability or price of mortgage financing in this state, the superintendent may from time to time designate such other threshold rates as may be necessary to achieve parity between such nationally chartered institutions and banking organizations, mortgage banks and mortgage brokers in this state or to alleviate such unduly negative effects. Such determination shall promptly be published on the website of the department of financial services.

(iii) Notwithstanding the thresholds set forth in this paragraph, if a home loan is insured by the federal housing administration, and if annual mortgage insurance premiums are collected by the federal housing administration for the maximum duration permitted under federal statute, and if such loan is not a Title 1 home improvement loan nor a home equity conversion mortgage, then the term "subprime home loan" means a home loan in which the initial interest rate or the fully-indexed rate, whichever is higher, exceeds by more than two and a half percentage points for a first-lien loan, or by more than four and a half percentage points for a subordinate-lien loan, the average commitment rate for loans in the northeast region with a comparable duration to the duration of such home loan, as published by the Federal Home Loan Mortgage Corporation (herein "Freddie Mac") in its weekly Primary Mortgage Market Survey (PMMS) posted in the week prior to the week in which the lender

provides the "good faith estimate" required under 12 USC §2601 et seq.

(d) "Home loan" means a loan, including an open-end credit plan, other than a reverse mortgage transaction or a loan made or fully or partially guaranteed by the state of New York mortgage agency, in which:

(i) The principal amount of the loan at origination does not exceed the conforming loan size limit (including any applicable special limit for jumbo mortgages) for a comparable dwelling as established from time to time by the federal national mortgage association;

(ii) The borrower is a natural person;

(iii) The debt is incurred by the borrower primarily for personal, family, or household purposes;

(iv) The loan is secured by a mortgage or deed of trust on real estate improved by a one to four family dwelling, or by a condominium unit, or by any certificate of stock or other evidence of ownership in, and a proprietary lease from, a corporation, partnership or other entity formed for the purpose of cooperative ownership of real estate, in either case, used or occupied or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons and which is or will be occupied by the borrower as the borrower's principal dwelling; and

(v) The property is located in this state.

(e) "Lender" means a mortgage banker as defined in paragraph (f) of subdivision one of section five hundred ninety of this chapter or an exempt organization as defined in paragraph (e) of subdivision one of section five hundred ninety of this chapter.

(f) "Mortgage broker" means a mortgage broker as defined in paragraph (g) of subdivision one of section five hundred ninety of this chapter and a mortgage banker as defined in paragraph (f) of subdivision one of section five hundred ninety of this chapter, when such mortgage banker solicits, processes, places or negotiates a mortgage loan for others.

2. Limitations and prohibited practices for subprime home loans. A subprime home loan shall be subject to the following limitations:

(a) No call provisions. No subprime home loan may contain a provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This provision shall not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material

terms of the loan.

(b) No negative amortization. No subprime home loan may contain a payment schedule with regular periodic payments that cause or may cause the principal balance to increase. A loan is considered to have such a schedule if the borrower is given the option to make regular periodic payments that cause the principal balance to increase, even if the borrower is also given the option to make regular periodic payments that do not cause the principal balance to increase. This paragraph shall not prohibit negative amortization as a result of a temporary forbearance sought by a borrower.

(c) No increased interest rate. No subprime home loan may contain a provision which increases the interest rate after default. This provision shall not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents; provided that the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

(d) Limitation on advance payments. No subprime home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(e) No modification or deferral fees. A lender may not charge a borrower any fees to modify, renew, extend, or amend a subprime home loan or to defer any payment due under the terms of a suprime home loan if, after the modification, renewal, extension or amendment, the loan is still a subprime home loan or, if no longer a subprime home loan, the annual percentage rate has not been decreased by at least two percentage points. For purposes of this paragraph, fees shall not include interest that is otherwise payable and consistent with the provisions of the loan documents. This paragraph shall not prohibit a lender from charging points and fees in connection with any additional proceeds received by the borrower in connection with the modification, renewal, extension or amendment (over and above the current principal balance of the existing subprime home loan) provided that the points and fees charged on the additional sum must reflect the lender's typical point and fee structure for subprime home loans. This paragraph shall not apply if the existing subprime home loan is in default or is sixty or more days delinquent and the modification, renewal, extension, amendment or deferral is part of a

work-out process.

(f) No oppressive mandatory arbitration clauses. No subprime home loan may be subject to a mandatory arbitration clause that is oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers.

(g) No financing of insurance or other products sold in connection with the loan. No subprime home loan shall finance, directly or indirectly, any credit life, credit disability, credit unemployment, or credit property insurance, or any other life or health insurance premiums, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, or any product or service that is not necessary or related to the home loan such as auto club memberships or credit report monitoring, but not including fees paid to the lender, broker, or closing agent, fees related to the recording of the mortgage, title insurance or other settlement fees. Insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis shall not be considered financed.

(h) No "loan flipping". No lender or mortgage broker making or arranging a subprime home loan may engage in the unfair act or practice of "loan flipping". "Loan flipping" is making a home loan to a borrower that refinances an existing home loan when the new loan does not have a tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's situation.

(i) No refinancing of special mortgages. No lender making a subprime home loan may refinance an existing home loan that is a special mortgage originated, subsidized or guaranteed by or through a state, tribal or local government, or nonprofit organization, which either bears a below-market interest rate at the time of origination, or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions, and where, as a result of the refinancing, the borrower will lose one or more of the benefits of the special mortgage, unless the lender is provided prior to loan closing documentation by a HUD approved housing counselor or the lender who originally made the special mortgage that the borrower has received home loan counseling about the advantages and disadvantages of

the refinancing.

(j) No lending without providing information on the availability of counseling. A lender or mortgage broker must deliver, place in the mail, fax or electronically transmit the following notice in at least twelve point type to the borrower of a subprime home loan at the time of application: "You should consider financial counseling prior to executing loan documents. The enclosed list of counselors is provided by the New York State Department of Financial Services." In the event of a telephone application, the disclosures must be made immediately after receipt of the application by telephone. Such disclosure shall be on a separate form. In order to utilize an electronic transmission, the lender or broker must first obtain either written or electronically transmitted permission from the borrower. A list of approved counselors, available from the New York state department of financial services, shall be provided to the borrower by the lender or the mortgage broker at the time that this disclosure is given.

(k) No encouragement of default. In making or arranging a subprime home loan, a lender or mortgage broker shall not recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of the subprime home loan that refinances all or any portion of such existing loan or debt.

(l) Prohibited payments to mortgage bankers and brokers. In making or arranging a subprime home loan, no lender, mortgage banker or mortgage broker shall accept or give any fee, kickback, thing of value, portion, split or percentage of charges, other than as payment for goods or facilities that were actually furnished or services that were actually performed. Such payment must be reasonably related to the value of the goods or facilities that were actually furnished or services that were actually performed.

(m) No prepayment penalties on subprime home loans. No prepayment penalties or fees shall be charged or collected on a subprime home loan. A prepayment penalty in a subprime home loan shall be unenforceable.

(n) No yield spread premiums. In connection with the making or brokering of a home loan, no person may provide, and no mortgage broker or mortgage lender may receive, directly or indirectly, any compensation that is based on, or varies with, the terms of any home loan. This paragraph shall not prohibit compensation based on the principal balance

of the loan.

(o) Mandatory escrow of taxes and insurance. No subprime home loan shall be made after July first, two thousand ten unless the lender requires and collects the monthly escrow of property taxes and hazard insurance. With respect to a subprime home loan, a borrower may waive escrow requirements by notifying the lender in writing after one year from consummation of the loan. The provisions of this paragraph shall not apply to a subprime home loan that is a subordinate lien when the taxes and insurance are escrowed through another home loan or where the borrower can demonstrate a record of twelve months of timely payments of taxes and insurance on a previous home loan.

(p) Mandatory disclosure of taxes and insurance payments. With respect to a subprime home loan, the first time a borrower is informed of the anticipated or actual periodic payment amount in connection with a first-lien residential mortgage loan for a specific property, the lender or mortgage broker shall inform the borrower that an additional amount will be due for taxes and insurance and shall disclose to the borrower as soon as reasonably possible the approximate amount of the initial periodic payment for property taxes and hazard insurance.

(q) No teaser rates. No lender or mortgage broker shall make or arrange a subprime home loan which has an initial or introductory rate with a duration of less than six months.

3. Certain loan provisions rendered void. Any provision in a subprime home loan that violates subdivision two of this section shall be rendered void.

4. Ability to repay. No lender or mortgage broker shall make or arrange a subprime home loan unless the lender or mortgage broker reasonably and in good faith believes at the time of the loan closing that one or more of the borrowers, when considered individually or collectively, has the ability to repay the loan according to its terms and to pay applicable real estate taxes and hazard insurance premiums. If a lender or mortgage broker making or arranging a subprime home loan knows that one or more home loans secured by the same real property will be made contemporaneously to the same borrower with the subprime home loan being made or arranged by that lender or mortgage broker, the

lender or mortgage broker making or arranging the subprime home loan must document the borrower's ability to repay the combined payments of all loans on the same real property.

(a) A lender or mortgage broker's analysis of a borrower's ability to repay a subprime home loan according to the loan terms and to pay related real estate taxes and insurance premiums shall be based on a consideration of the borrower's credit history, current and expected income, current obligations, employment status, and other financial resources other than the borrower's equity in the real property that secures repayment of the subprime home loan.

(b) In determining a borrower's ability to repay a subprime home loan, the lender or mortgage broker shall take reasonable steps to verify the accuracy and completeness of information provided by or on behalf of the borrower using tax returns, payroll receipts, bank records, reasonable alternative methods, or reasonable third-party verification.

(c) In determining a borrower's ability to repay a subprime home loan according to its terms when the loan has an adjustable rate feature, the lender or mortgage broker shall calculate the monthly payment amount for principal and interest by assuming (i) the loan proceeds are fully disbursed on the date of the loan closing, (ii) the loan is to be repaid in substantially equal monthly amortizing payments of principal and interest over the entire term of the loan, with no balloon payment, and (iii) the interest rate over the entire term of the loan is a fixed rate equal to the higher of the initial interest rate or the fully indexed rate at the time of the loan closing, without considering any initial discounted rate.

(d) A lender or mortgage broker's analysis of a borrower's ability to repay a subprime home loan may utilize reasonable commercially recognized underwriting standards and methodologies, including automated underwriting systems, provided the standards and methodologies comply with the provisions of this section.

5. Required legend. Subprime home loan mortgages shall include a legend on top of the mortgage in twelve-point type stating that the mortgage is a subprime home loan subject to this section.

6. Evasion of statutory requirements. The provisions of this section

shall apply to any person who attempts to avoid the application of this section by any subterfuge, including but not limited to, splitting or dividing any loan transaction into separate parts for the purpose of evading the provisions of this section.

7. Good faith errors. A lender of a subprime home loan that, when acting in good faith, fails to comply with the provisions of this section, shall not be deemed to have violated this section if, prior to the institution of any action and before the borrower is prejudiced, the lender notifies the borrower of the compliance failure, appropriate restitution is made, and whatever adjustments that are necessary are made to the loan to make the loan satisfy the requirements of this section.

8. Enforcement. The attorney general or the superintendent may enforce the provisions of this section.

9. Damages. Any person found by a preponderance of the evidence to have violated this section shall be liable to the borrower of a subprime home loan for actual damages.

10. Attorneys fees. A court may also award reasonable attorneys' fees to a prevailing borrower in a foreclosure action.

11. Equitable relief. A borrower may be granted injunctive, declaratory and such other equitable relief as the court deems appropriate in an action to enforce compliance with this section.

12. Remedies not exclusive. The remedies provided in this section are not intended to be the exclusive remedies available to a borrower of a subprime home loan.

13. Defense to foreclosure. In any action by a lender or assignee to enforce a loan against a borrower in default more than sixty days or in foreclosure, a borrower may assert as a defense, any violation of this section.

14. Severability. The provisions of this section shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid, or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby. If any provision of this section is declared to be inapplicable to any specific category, type, or kind of points and fees with respect to a home loan, the provisions of this section shall nonetheless continue to apply with respect to all other points and fees.