*** § 2405. Purchase of existing mortgages.** (1) A purpose of the agency shall be to purchase existing mortgages from banks within the state during periods when there is an inadequate supply of credit available for new residential mortgages and to require such banks to invest an amount equal to the proceeds thereof as rapidly as possible in new mortgages on residential real property for family units within the state.

It is hereby found and declared that such activities by the agency will alleviate a condition of affairs in this state which is contrary to the public health, safety and general welfare and which has constituted in the past and from time to time in the future can be expected to constitute a public emergency. It is further found and declared that such purposes are in all respects for the benefit of the people of the state of New York and the agency shall be regarded as performing an essential governmental function in carrying out its purposes and in exercising the powers granted by this title.

(2) The agency shall purchase existing mortgages from banks at such prices and upon such terms and conditions as it shall determine; provided, however, that the total purchase price for all existing mortgages which the agency commits to purchase from a bank at any one time shall in no event be more than the total of the unpaid principal balances thereof, plus accrued interest thereon.

(3) (a) The agency shall require as a condition of purchase of existing mortgages from banks that such banks shall, within such period as may be approved by the agency not in excess of ninety days of receipt of the purchase price, enter into written commitments to loan and shall, within such period as may be approved by the agency, loan an amount equal to the entire purchase price of such existing mortgages on new mortgages within the state having such terms as the agency may prescribe.

(b) (i) The proportionate dollar amount of commitments from each agency issue of bonds or notes used to purchase mortgages from banks in each region of the state, as such regions are set forth in subdivision nine of section twenty-four hundred twenty-six of this title shall, subject to subparagraph (ii) hereof, reflect the proportion that the number of families in each region bears to the number of families in the

state as a whole.

(ii) To the extent that the reasonable demand by banks in any region is insufficient to accommodate the proportion of an agency issue of bonds or notes determined pursuant to subparagraph (i) hereof for such region, the agency shall use reasonable efforts to purchase mortgages such that the excess funds from such region are distributed among the other regions in proportion to the relative reasonable demand. In determining reasonable demand, the agency shall consider, among other things, historical demand for mortgages in such regions, the dollar amount of offers by banks to sell mortgages to the agency and the reasonableness of such offers, considering the size, mortgage history, total assets, liquidity and financial ability of the bank to conform to the contract of sale and the bank's record of compliance with agency requirements.

(iii) The agency shall use its best efforts to the end that not less than one-sixth in dollar amount of new mortgages resulting from its program of purchasing mortgages shall be on newly constructed residences. A newly constructed residence is defined as a one to four family dwelling not previously occupied.

(iv) During the time that the agency is accepting offers to sell mortgages from banks, the agency shall advertise, in newspapers of general circulation within the state, the fact that it is accepting offers from banks, and such other information as the agency determines to be helpful in generating maximum participation by banks and potential mortgagors. All banks within each such region shall be invited by the agency to participate in the agency's purchase of mortgages from the proceeds of the sale of each issue by the agency of its bonds and notes. The allocation of the proceeds of each such agency issue among the banks requesting participation within each region shall, to the extent practicable, maximize the number of banks which participate. Any commitment between the agency and a bank shall require that the bank provide the agency with such information, as may be deemed necessary by the agency, for the agency to assure that the requirements of this title or any other requirements imposed by the agency with respect to the purchase of mortgages with the proceeds of any agency issue of bonds or notes has been fulfilled.

(c) No commitment to loan or loan on a mortgage secured or to be

secured by a multiple dwelling shall satisfy the requirement of paragraph (a) of this subdivision unless the prior written approval of such commitment shall have been obtained from the agency. The agency may refuse to approve any commitment to lend on such a multiple dwelling mortgage if so required by the terms of any bonding resolution and shall not approve any commitment to lend on such a multiple dwelling mortgage if the approval thereof would increase the total dollar amount of such commitments on multiple dwelling mortgages approved by the agency to an amount in excess of forty percent of the total purchase price of all mortgages theretofor purchased by the agency pursuant to this section.

(4) In the case of individual borrowers, new mortgages made by banks that sell existing mortgages to the agency shall bear interest computed in accordance with section 5-501 of the general obligations law (whether or not insured or guaranteed by the United States of America or any agency thereof) at a rate which does not exceed the maximum interest rate, if any, set by the agency for such mortgages. The agency may set such a maximum interest rate chargeable to individual borrowers on such new mortgages, notwithstanding the maximum interest rate, if any, fixed by section 5-501 of the general obligations law or any other law not specifically amending or applicable to this section, at the rate that the existing mortgages purchased by the agency were discounted to yield plus an interest differential, not in excess of one percent per annum, which the agency from time to time shall determine to be adequate consideration to induce such banks to sell existing mortgages to the agency and to loan an amount equal to the proceeds on new mortgages in furtherance of the purposes of and subject to the conditions of this title. In the case of corporate borrowers, such new mortgages shall bear interest at a rate not substantially lower than the rate of interest that banks are charging at the time of commitment on comparable new mortgages. Each such bank that sells existing mortgages to the agency shall annually account and pay over to the agency or to the New York state housing finance agency for deposit in and for the purposes of the low rent lease account as set forth in paragraphs (a) and (b) of subdivision four of section forty-four-a of the private housing finance law or any successor entity as the agency may direct, or to both the agency and the New York state housing finance agency for such deposit and purposes in such proportions as the agency may direct, an amount

equal to the difference between (a) the total amount of interest (which shall include all charges to individual and corporate borrowers that would be treated as interest under section 5-501 of the general obligations law and any regulations of the superintendent of financial services pursuant to section fourteen-a of the banking law) received by it during the preceding year on all such new mortgages and (b) the total amount of interest which such new mortgages would have yielded if the interest thereon had been at the maximum rate chargeable to individual borrowers on such new mortgages plus an additional interest differential, not in excess of one percent per annum, determined by the agency to be adequate consideration to induce participating banks to make new loans on multiple dwellings.

(5) The agency shall require the submission to it by each bank from which the agency has purchased existing mortgages evidence satisfactory to the agency of the making of new mortgage loans and of paying over to the low rent lease account as required by this section and in connection therewith may, through its employees or agents or those of the department of financial services, inspect the books and records of any such bank.

(6) Compliance by any bank with the terms of its agreement with or undertaking to the agency with respect to the making of any new mortgages in connection with the sale of existing mortgages and of paying over to the low rent lease account may be enforced by decree of the supreme court. The agency may require as a condition of purchase of existing mortgages from any national banking association the consent of such association to the jurisdiction of the supreme court over any such proceeding. The agency may also require agreement by any bank, as a condition of the agency's purchase of existing mortgages from such bank, to the payment of penalties to the agency for violation by the bank of its undertakings to the agency, and such penalties shall be recoverable at the suit of the agency.

(7) The agency shall require as a condition of purchase of any existing mortgage from a bank that the bank represent and warrant to the agency that

(a) the unpaid principal balance of the mortgage and the interest rate thereon have been accurately stated to the agency;

(b) the amount of the unpaid principal balance is justly due and

owing;

(c) the bank has no notice of the existence of any counterclaim, offset or defense asserted by the mortgagor or any successor in interest;

(d) the mortgage is evidenced by a bond or promissory note and a mortgage document which has been properly recorded with the appropriate public official;

(e) the mortgage constitutes a valid first lien or second lien on the real property described to the agency in accordance with subdivision five of section twenty-four hundred two of this part subject only to real property taxes not yet due, installments of assessments not yet due, and easements and restrictions of record which do not adversely affect, to a material degree, the use or value of the real property or improvements thereon;

(f) the mortgage when made was lawful under the banking law or federal law, whichever governs the affairs of the bank, and would be lawful on the date of purchase by the agency if made by the bank on that date in the amount of the then unpaid principal balance;

(g) the mortgagor is not now in default in the payment of any installment of principal or interest, escrow funds, real property taxes or otherwise in the performance of his obligations under the mortgage documents and has not to the knowledge of the bank been in default in the performance of any such obligation for a period of longer than sixty days during the life of the mortgage; and

(h) the improvements to the mortgaged real property are covered by a valid and subsisting policy of insurance issued by a company authorized by the superintendent of financial services to issue such policies in the state of New York and providing fire and extended coverage to an amount not less than eighty percent of the insurable value of the improvements to the mortgaged real property.

(8) Each bank shall be liable to the agency for any damages suffered by the agency by reason of the untruth of any representation or the breach of any warranty and, in the event that any representation shall prove to be untrue when made or in the event of any breach of warranty, the bank shall, at the option of the agency, repurchase the existing mortgage for the original purchase price adjusted for amounts subsequently paid thereon, as the agency may determine.

(9) The agency need not require the recording of an assignment of any existing mortgage purchased by it from a bank pursuant to this section and shall not be required to notify the mortgagor of its purchase of the mortgage. The agency shall not be required to inspect or take possession of the mortgage documents if the bank from which the existing mortgage is purchased by the agency shall enter a contract to service such mortgage and account to the agency therefor.

(10) Notwithstanding any other provision of law, the agency is authorized to require, as a condition to the purchase from banks of existing mortgages, such restrictions upon assumability of each new mortgage as the agency may determine to be necessary or desirable to assure the exemption from federal income taxes of the interest payable on its bonds and notes. Such restrictions shall be enforceable by the originating bank, the agency, and any successor holder of the mortgage unless expressly waived in writing by or on behalf of the agency.

(11) The agency shall maintain a continuous review of the availability of funds in regular banking channels for mortgages. Except as stated herein with respect to forward commitment mortgages and housing loans, in the event that the agency shall determine that an adequate supply of funds exists in regular banking channels for mortgages the agency shall not authorize the issuance of bonds for the purchase of mortgages except refunding bonds, until such time as the agency shall determine that the supply of funds available for mortgages is again inadequate. The agency shall notify the governor, the temporary president of the senate, and the speaker of the assembly of any determination that there is an inadequate supply of funds available for mortgages made by it under this subdivision. Discontinuance by the agency of the purchase of mortgages pursuant to a determination that an adequate supply of funds exists in regular banking channels shall not constitute, or in any way effect, termination of the agency as provided in subdivision six of section two thousand four hundred three of this title. Notwithstanding the foregoing, the agency may issue bonds or notes for the purpose of furthering forward commitment mortgage programs described in section twenty-four hundred five-b of this title and housing loan programs described in section twenty-four hundred five-c of this title if the agency shall determine that such programs will increase the supply of credit available for new residential mortgages and new residential

improvement loans at carrying charges within the financial means of persons and families of low or moderate income.

* NB Effective until July 23, 2027

* § 2405. Purchase of mortgages. (1) The purpose of the agency shall be to purchase mortgages from banks within the state during periods when there is an inadequate supply of credit available for new residential mortgage loans and to require such banks to invest an amount equal to the proceeds thereof as rapidly as possible in new mortgages on residential real property for family units within the state.

It is hereby found and declared that such activities by the agency will alleviate a condition of affairs in this state which is contrary to the public health, safety and general welfare and which has constituted in the past and from time to time in the future can be expected to constitute a public emergency. It is further found and declared that such purposes are in all respects for the benefit of the people of the state of New York and the agency shall be regarded as performing an essential governmental function in carrying out its purposes and in exercising the powers granted by this title.

(2) The agency shall purchase mortgages from banks at such prices and upon such terms and conditions as it shall determine; provided, however, that the total purchase price for all mortgages which the agency commits to purchase from a bank at any one time shall in no event be more than the total of the unpaid principal balances thereof.

(3) (a) The agency shall require as a condition of purchase of mortgages from banks that such banks shall, within such period as may be approved by the agency not in excess of ninety days of receipt of the purchase price, enter into written commitments to loan and shall, within such period as may be approved by the agency, loan an amount equal to the entire purchase price of such mortgages on new mortgages within the state having such terms as the agency may prescribe.

(b) (i) The proportionate dollar amount of commitments from each agency issue of bonds or notes used to purchase mortgages from banks in each region of the state, as such regions are set forth in subdivision nine of section twenty-four hundred twenty-six of this title shall, subject to subparagraph (ii) hereof, reflect the proportion that the number of families in each region bears to the number of families in the

state as a whole.

(ii) To the extent that the reasonable demand by banks in any region is insufficient to accommodate the proportion of an agency issue of bonds or notes determined pursuant to subparagraph (i) hereof for such region, the agency shall use reasonable efforts to purchase mortgages such that the excess funds from such region are distributed among the other regions in proportion to the relative reasonable demand. In determining reasonable demand, the agency shall consider, among other things, historical demand for mortgages in such regions, the dollar amount of offers by banks to sell mortgages to the agency and the reasonableness of such offers, considering the size, mortgage history, total assets, liquidity and financial ability of the bank to conform to the contract of sale and the bank's record of compliance with agency requirements.

(iii) The agency shall use its best efforts to the end that not less than one-sixth in dollar amount of new mortgages resulting from its program of purchasing mortgages shall be on newly constructed residences. A newly constructed residence is defined as a one to four family dwelling not previously occupied.

(iv) During the time that the agency is accepting offers to sell mortgages from banks, the agency shall advertise, in newspapers of general circulation within the state, the fact that it is accepting offers from banks, and such other information as the agency determines to be helpful in generating maximum participation by banks and potential mortgagors. All banks within each such region shall be invited by the agency to participate in the agency's purchase of mortgages from the proceeds of the sale of each issue by the agency of its bonds and notes. The allocation of the proceeds of each such agency issue among the banks requesting participation within each region shall, to the extent practicable, maximize the number of banks which participate. Any commitment between the agency and a bank shall require that the bank provide the agency with such information, as may be deemed necessary by the agency, for the agency to assure that the requirements of this title or any other requirements imposed by the agency with respect to the purchase of mortgages with the proceeds of any agency issue of bonds or notes has been fulfilled.

(c) No commitment to loan or loan on a mortgage secured or to be

secured by a multiple dwelling shall satisfy the requirement of paragraph (a) of this subdivision unless the prior written approval of such commitment shall have been obtained from the agency. The agency may refuse to approve any commitment to lend on such a multiple dwelling mortgage if so required by the terms of any bonding resolution and shall not approve any commitment to lend on such a multiple dwelling mortgage if the approval thereof would increase the total dollar amount of such commitments on multiple dwelling mortgages approved by the agency to an amount in excess of forty percent of the total purchase price of all mortgages theretofor purchased by the agency pursuant to this section.

(4) In the case of individual borrowers, such new mortgages shall bear interest computed in accordance with section 5-501 of the general obligations law (whether or not insured or guaranteed by the United States of America or any agency thereof) at a rate which does not exceed the maximum interest rate, if any, set by the agency for such mortgages. The agency may set such a maximum interest rate chargeable individual borrowers on such new loans, notwithstanding the maximum interest rate fixed by section 5-501 of the general obligations law, at the rate that the mortgages purchased by the agency were discounted to yield plus an interest differential, not in excess of one percent per annum, which the agency from time to time shall determine to be adequate consideration to induce such banks to sell existing mortgages to the agency and to loan an amount equal to the proceeds on new mortgages in furtherance of the purposes of and subject to the conditions of this title. In the case of corporate borrowers, such new mortgages shall bear interest at a rate not substantially lower than the rate of interest that banks are charging at the time of commitment on comparable new mortgage loans. Each such bank shall annually account and pay over to the agency or to the New York state housing finance agency for deposit in and for the purposes of the low rent lease account as set forth in paragraphs (a) and (b) of subdivision four of section forty-four-a of the private housing finance law or any successor entity as the agency may direct, or to both the agency and the New York state housing finance agency for such deposit and purposes in such proportions as the agency may direct, an amount equal to the difference between (a) the total amount of interest (which shall include all charges to individual and corporate borrowers that would be treated as interest under section 5-501 of the

general obligations law and any regulations of the superintendent of financial services pursuant to section fourteen-a of the banking law) received by it during the preceding year on all such new mortgages and (b) the total amount of interest which such mortgages would have yielded if the interest thereon had been at the maximum rate chargeable individual borrowers on such new loans plus an additional interest differential, not in excess of one percent per annum, determined by the agency to be adequate consideration to induce participating banks to make new loans on multiple dwellings.

(5) The agency shall require the submission to it by each bank from which the agency has purchased mortgages evidence satisfactory to the agency of the making of new mortgage loans and of paying over to the low rent lease account as required by this section and in connection therewith may, through its employees or agents or those of the department of financial services, inspect the books and records of any such bank.

(6) Compliance by any bank with the terms of its agreement with or undertaking to the agency with respect to the making of any mortgage loans and of paying over to the low rent lease account may be enforced by decree of the supreme court. The agency may require as a condition of purchase of mortgages from any national banking association the consent of such association to the jurisdiction of the supreme court over any such proceeding. The agency may also require agreement by any bank, as a condition of the agency's purchase of mortgages from such bank, to the payment of penalties to the agency for violation by the bank of its undertakings to the agency, and such penalties shall be recoverable at the suit of the agency.

(7) The agency shall require as a condition of purchase of any mortgage from a bank that the bank represent and warrant to the agency that

(a) the unpaid principal balance of the mortgage and the interest rate thereon have been accurately stated to the agency;

(b) the amount of the unpaid principal balance is justly due and owing;

(c) the bank has no notice of the existence of any counterclaim, offset or defense asserted by the mortgagor or his successor in interest;

(d) the mortgage is evidenced by a bond or promissory note and a mortgage document which has been properly recorded with the appropriate public official;

(e) the mortgage constitutes a valid first lien or second lien on the real property described to the agency in accordance with subdivision five of section twenty-four hundred two of this part subject only to real property taxes not yet due, installments of assessments not yet due, and easements and restrictions of record which do not adversely affect, to a material degree, the use or value of the real property or improvements thereon;

(f) the mortgage loan when made was lawful under the banking law or federal law, whichever governs the affairs of the bank, and would be lawful on the date of purchase by the agency if made by the bank on that date in the amount of the then unpaid principal balance;

(g) the mortgagor is not now in default in the payment of any installment of principal or interest, escrow funds, real property taxes or otherwise in the performance of his obligations under the mortgage documents and has not to the knowledge of the bank been in default in the performance of any such obligation for a period of longer than sixty days during the life of the mortgage, and

(h) the improvements to the mortgaged real property are covered by a valid and subsisting policy of insurance issued by a company authorized by the superintendent of financial services to issue such policies in the state of New York and providing fire and extended coverage to an amount not less than eighty percent of the insurable value of the improvements to the mortgaged real property.

(8) Each bank shall be liable to the agency for any damages suffered by the agency by reason of the untruth of any representation or the breach of any warranty and, in the event that any representation shall prove to be untrue when made or in the event of any breach of warranty, the bank shall, at the option of the agency, repurchase the mortgage for the original purchase price adjusted for amounts subsequently paid thereon, as the agency may determine.

(9) The agency need not require the recording of an assignment of any mortgage purchased by it from a bank pursuant to this section and shall not be required to notify the mortgagor of its purchase of the mortgage. The agency shall not be required to inspect or take possession of the

mortgage documents if the bank from which the mortgage is purchased by the agency shall enter a contract to service such mortgage and account to the agency therefor.

(10) The agency shall maintain a continuous review of the availability of funds in regular banking channels for new mortgage loans. In the event that the agency shall determine that an adequate supply of funds exists in regular banking channels for new mortgage loans the agency shall not authorize the issuance of bonds for the purchase of mortgages except refunding bonds, until such time as the agency shall determine that the supply of funds available for mortgages is again inadequate. The agency shall notify the governor, the temporary president of the senate, and the speaker of the assembly of any determination that there is an inadequate supply of funds available for mortgages made by it under this subdivision. Discontinuance by the agency of the purchase of mortgages pursuant to a determination that an adequate supply of funds exists in regular banking channels shall not constitute, or in any way effect, termination of the agency as provided in subdivision six of section two thousand four hundred three of this title.

* NB Effective July 23, 2027