July 9, 2014

TO THE INDIVIDUAL OR INSTITUTION ADDRESSED

Re: Adoption of New Part 83 of the General Regulations of the Superintendent (Shared Appreciation Mortgage Modifications)

The Superintendent has adopted new Part 83 of the General Regulations of the Superintendent. Part 83 implements Section 6-f of the New York Banking Law. The regulation became effective upon publication in the State Register on July 9, 2014.

Currently, a number of New York homeowners owe more on their mortgage loans than their homes are worth. Meanwhile, foreclosures have soared in recent years. While mortgage modifications have helped many homeowners keep their homes, many other struggling homeowners do not qualify. Recognizing the need to assist struggling borrowers avoid foreclosure, Section 6-f of the Banking Law was intended to provide New York mortgage lenders and borrowers with another tool to help borrowers keep their homes.

Section 6-f authorizes the Superintendent to adopt rules permitting shared appreciation agreements, under which the lender on a residential mortgage loan or cooperative apartment unit loan or its assignee (the "Holder") reduces the principal amount of the mortgage loan to assist a borrower at risk of foreclosure. Under such an agreement, the Holder is entitled to share in any appreciation of the market value of the property between the effective date of the reduction in the principal amount of the mortgage loan and the date when the property is sold or transferred, but not more than the lesser of: (i) the amount of the reduction in principal, plus interest at the same rate as applies to the remaining principal amount; or (ii) 50% of the amount of appreciation.

Shared appreciation agreements provide lenders with an additional incentive to allow borrowers to stay in their homes. At the same time, Section 6-f and Part 83 impose disclosure requirements, and limitations on the amount of appreciation that lenders can share, which serve to guard against abuse of vulnerable New Yorkers. The intended result of the law and regulation is that more homeowners will keep their homes and avoid the costly and protracted foreclosure process, lenders will recoup their investment, and local communities will become more stable.

The initial Notice of Proposed Rule Making for Part 83 was published in the December 18, 2013 State Register. The comment period expired on February 1, 2014. As a result of comments received, changes were made in the proposed regulation and a Notice of Revised Rule Making was published in the March 19, 2014 State Register pursuant to the State Administrative Procedure Act. The comment period for the revised proposal expired on April 18, 2014.

The final rule reflects the following changes to the revised proposal: (i) inclusion of a definition of "Debt-to-Income Ratio" or "DTI", which is defined in the regulation to be "the result of dividing the Mortgagor's monthly housing payment (principal, interest, taxes, and insurance) by the Mortgagor's gross monthly income. Gross monthly income shall be deemed to be income determined in accordance with 24 CFR 92.203(a)" – HUD's HOME income verification requirements; and (ii) amendment to the definition of "Capital Improvements" to track the New

York State Department of Taxation and Finance, Tax Bulletin ST-104. The Department also: (i) changed the requirement for Mortgagors to consult with “certified housing counselors” to “government approved housing counseling agencies”; and (ii) deleted, as duplicative, a subsection of Section 83.7 (b)(1).

Very truly yours,

Daniel M. Burstein
Executive Deputy Superintendent
Real Estate Finance Division