Credit Union ASSOCIATION New York

January 31, 2014

Mr. Harry Goberdhan
New York State Department of Financial Services
One Commerce Plaza
Albany, NY 12257

Dear Mr. Goberdhan:

On behalf of the Credit Union Association of New York, I would like to take this opportunity to comment on the Department of Financial Services' proposal to authorize credit unions to offer shared appreciation loan modifications under certain conditions. We share the Department's concern that too many homeowners are continuing to struggle even as the economy improves. We also agree that shared appreciation loan modifications are a tool that lenders should have in order to assist struggling homeowners.

We feel this proposal would be made even more useful to lenders if the Department would: 1) clarify that it is not intended to limit the existing authority federally chartered credit unions already have to enter into these modifications; and 2) remove caps on the amount of money credit unions can receive in return for agreeing to these very unique modifications.

Credit unions take justifiable pride in their flexible but responsible mortgage lending practices, which, if followed by the larger financial services industry, would have prevented the Great Recession. As CFPB Director Richard Cordray noted in a speech before the Credit Union National Association, credit unions "were not underwriting the bad loans that brought down the housing market. Instead, you were sounding the alarm bells well before the sinking of the economy. And you were upholding sound underwriting standards even though you lost customers and market share to the financial predators."

Unfortunately, given the scope of the nation's economic difficulty, credit unions have not been immune from the problems or risks posed by underwater mortgages. According to the credit unions we surveyed regarding this proposal, it is clear that even today, there are some members who are still having trouble making mortgage payments. While it is impossible to predict how many will use shared appreciation loan modifications, there is no reason that state-chartered credit unions should be denied the opportunity to offer them to struggling members when appropriate.

In finalizing this proposal, we encourage the Department to be mindful of the fact that NCUA authorized federally chartered credit unions to offer shared appreciation loan modifications via a legal opinion letter in 2009. (See NCUA opinion of council, Shared Appreciation Loan

Modifications, May 28, 2009.) In the letter and a subsequent supervisory guidance, NCUA encouraged credit unions to offer shared appreciation loan modifications, so long as they do so prudently. (See Supervisory Letter evaluating residential Real Estate Mortgage Loan Modification Loan Programs.) Under this authority, federal credit unions have more flexibility when providing these loans than the Department of Financial Services is offering to NYS credit unions. As a result, the Department should clarify in the final rule that its intent is solely to authorize state-chartered credit unions to offer these types of loan modifications, not to prevent and restrict the ability of federally chartered credit unions.

In addition, the Department should consider adopting NCUA's less stringent approach to permitting these modifications. For example, under this proposal, the share of a mortgage holder's appreciation in a home's market value would be limited to the lesser of the amount of the reduction in principal plus interest; or 50% of the amount of appreciation in market value.

Conditions such as these are best left in the hands of the individual holder and borrower. A 50% split of the appreciation value may seem like a fair rule in general, but on a practical level, a credit union agreeing to a mortgage modification is taking on more than 50% of the risk. Rather than imposing arbitrary caps, the Department should allow the terms of these agreements to be determined between credit unions and their members on a case-by-case basis. Even without appreciation caps, such modifications will of course be subject to review by examiners to ensure that they are consistent with credit union safety and soundness. A supervisory guidance similar to the one issued by NCUA would be more helpful than stringent limits on when shared appreciation loan modifications can and cannot be offered.

Our Association is committed to ensuring that: 1) state-chartered credit unions are not at a disadvantage to their federally chartered counterparts and 2) all credit unions can serve their members without being encumbered by regulations and laws that don't impact the safety and soundness of the credit union industry. Our requested changes to the proposed regulation would assure this end with regard to shared appreciation loan modifications.

Sincerely,

William J. Mellin
President/CEO
Credit Union Association of New York