

## **Reverse Mortgages Secured by Ownership Interests in Cooperatives**

**Summary Conclusion:** Federal law preempts a state rule prohibiting reverse mortgages from being secured by ownership interests in cooperatives. A federal savings association may make reverse mortgages secured by ownership interests in cooperatives.

**Date:** June 12, 2002

**Subjects:** Home Owners' Loan Act/Savings Association Powers

P-2002-6

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Office of Thrift Supervision  
Department of the Treasury

Chief Counsel

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6251

June 12, 2002

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Re: Reverse Mortgages Secured by Ownership Interests in Cooperatives

Dear [ ]:

This responds to your inquiry on behalf of [ ] (“Association”), a federal savings association. You ask whether federal law preempts a New York State Banking Department regulation (“NYBD rule”) that prohibits reverse mortgages from being secured by ownership interests in cooperatives.<sup>1</sup> NYBD staff informally indicated to us and to you its understanding that it could not enforce the prohibition against federal savings associations as a matter of federal preemption. This letter confirms that the NYBD’s understanding is correct.

The Home Owners’ Loan Act (“HOLA”)<sup>2</sup> authorizes federal savings associations to make reverse mortgages secured by ownership interests in cooperatives. HOLA § 5(c)(1)(B) provides that federal savings associations may make “[l]oans on the security of liens upon residential real property.”<sup>3</sup> HOLA § 5(c)(6) provides that “residential real property” includes “homes (including condominiums and cooperatives, except that in

<sup>1</sup> N.Y. Comp. Codes R. & Reg. tit. 3, § 79.2(d). The NYBD rule provides, “A reverse mortgage loan may not be secured by certificates of stock or other evidence of ownership interests in and property leases from corporations or partnership formed for the purposes of cooperative ownership of real property.” NY statute and regulation purport to apply the prohibition to federal savings associations. See McKinney’s Banking Law § 6-h (“authorized lenders” must comply with NYBD regulations); McKinney’s Real Property Law § 280.1(d) (“authorized lender” includes federal savings associations); N.Y. Comp. Codes R. & Regs. tit. 3, § 79.2(a) (same). One exception is for reverse mortgages that are part of the Federal Housing Administration’s Home Equity Conversion Mortgage (“HECM”) program. McKinney’s Banking Law § 6-h; McKinney’s Real Property Law § 280.11; N.Y. Comp. Codes R. & Regs. tit. 3, § 79.1(b). HECMs may be secured by ownership interests in cooperatives. 12 U.S.C. § 1715z-20(b)(4). OTS discussed with NYBD staff the possibility that another exception, McKinney’s Real Property Law § 280.4, could except from the prohibition other reverse mortgages made by federal savings associations, but the NYBD declined to interpret the exception in this manner.

<sup>2</sup> 12 U.S.C. § 1461 *et seq.*

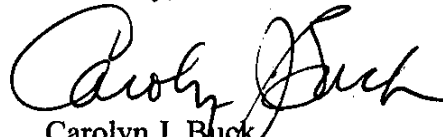
<sup>3</sup> 12 U.S.C. § 1464(c)(1)(B). *Accord* 12 C.F.R. § 560.30 (2002).

connection with loans on individual cooperative units, such loans shall be adequately secured as defined by the Director).”<sup>4</sup> As OTS noted in a prior legal opinion, OTS regulations “permit residential real estate loans that contain each of the terms characteristic of reverse mortgage loans.”<sup>5</sup>

The NYBD rule does not apply to federal savings associations because of federal preemption. OTS’s HOLA regulations specifically provide that the types of state laws preempted for federal savings associations “include, without limitation, state laws purporting to impose requirements regarding . . . (7) *security property*, including leaseholds.” 12 C.F.R. § 560.2(b)(7) (2002) (emphasis added). Accordingly, the Association may make reverse mortgages secured by ownership interests in cooperatives notwithstanding the NYBD rule.

We trust this is responsive to your inquiry. If you have further questions, please contact Richard Bennett, Counsel (Banking and Finance), at (202) 906-7409.

Sincerely,



Carolyn J. Buck  
Chief Counsel

cc: Barbara Kent, NYBD  
OTS Regional Directors  
OTS Regional Counsel

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<sup>4</sup> 12 U.S.C. § 1464(c)(6). *Accord* 12 C.F.R. § 560.30 n.9 (2002).

<sup>5</sup> OTS Op. Chief Counsel (May 3, 1996) at 4. Other OTS authorities further discuss the terms characteristic of reverse mortgages. *See* OTS Mem. Dep. Director for Regional Operations (Sept. 30, 1994); *Glossary of Selected Terms*, OTS (1996); and 12 C.F.R. § 591.2(n) (2002) (definition of reverse mortgage for purposes of preemption of state due-on-sale laws).