H1106 Will Legalize Hiding Dangerous Mortgage Terms

NCLC National Consumer Law Center

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THE PROBLEM: Shared Equity Investments Are Equity-Stealing Mortgages In Disguise, and H1106 will make it easier for creditors to offer them in Massachusetts.

The shared equity investments (SEIs) in H1106 are mortgages that only have one huge payment at the end. The lender doesn't tell you how much the payment will be or what the interest rate is until the payment is due. Instead, the payment is calculated as a percentage of your home's value at payoff.[1] Sometimes they're called "shared appreciation mortgages" or "home equity investment loans." Whatever they're called, the payment due is usually so big that you must sell your house to pay it. Not only that, but the payment is often so big that it may take most of the equity you were planning to use for other things.

What's wrong with H1106?

H1106 takes away the protections that Massachusetts and federal law give borrowers. **It does so by declaring that SEIs are not mortgage loans.** That means:

- Foreclosure protections won't apply
- Loan modification rules won't apply
- Loan servicing protections won't apply
- Truth in Lending Act protections won't apply, including–
  - No APR disclosure
  - No protections for high-cost loans[2]
    - H1106 allows SEIs up to 20% with no extra protections
  - No ability to compare the cost of SEIs to traditional loans
- Borrowers can lose the right to go to court for disputes[3]

The companies that make SEIs use complicated contracts and fancy legal tricks to claim their product is not a loan. But the truth is that they work just like a loan: the borrower gets money upfront and must repay it at the end.

What else is wrong with H1106?

- It limits liability for assignees of SEI contracts. That's a problem because, like traditional mortgages, most SEI contracts are sold to Wall Street investors and securitized. If the assignee has limited liability, the borrower may be left holding the bag if something goes wrong.

- It exempts anyone making 12 or fewer SEIs per year, nonprofits, and schools. So consumers getting SEIs from those lenders will have even fewer protections. For comparison, the federal Truth in Lending Act covers mortgage lenders making over 5 mortgages per year.[4]

- It allows using appraisers who have a business relationship with the lender, which can compromise the appraiser's independence.

- It allows lenders to rig the loan payment calculation by discounting the starting home value. For example, some SEI contracts require the borrower to pay a percentage of the amount by which the property value grows after closing. So if a house is worth $200,000 at closing, the contract requires payment of 50% of the growth, and the house is worth $400,000 at payoff, the borrower will owe $100,000. But if the lender discounts the starting value to $180,000, the borrower will owe an extra $10,000.
- It gives SEI lenders an unfair advantage over traditional mortgage lenders, which must obey federal and state mortgage lending laws.

THERE IS A BETTER OPTION: HD3988 / SD913

HD3988 and SD913 ensure that SEIs[5] are used responsibly and transparently. It regulates them as the mortgage loans that they are and closes a dangerous loophole created in November 2024 by the Economic Development bill (Section 269). That bill granted blanket immunity to a small category of shared appreciation mortgages.

HD3988 and SD913 protect consumers and create a level playing field for traditional lenders.

ENDNOTES

1. In a SEI, the rate at which the property value grows between closing and payoff has the same effect as the interest rate on a loan—it makes the amount due on the loan go up over time. So if you promise to pay 50% of your property value at payoff, the actual amount you will owe changes each year as property values change. This is like an adjustable rate mortgage, where the interest rate changes each year.
2. Under the federal Home Ownership and Equity Protection Act, a “high-cost loan” must meet special rules and protections. The threshold for being high cost floats, but as of Mar. 14, 2025, it is about 13% APR.
3. Most SEI contracts force borrowers to use private arbitration. But federal law prohibits requiring arbitration for home mortgages.
4. Reg. Z § 1026.2(a)(17)(v)
5. SEIs are called Home Equity Investment Loans in HD3988 and SD913.