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Department of Financial and Professional Regulation
Attention: Craig Cellini
320 West Washington, 2nd Floor
Springfield, IL 62786

Re: Comments on proposed amendments to the Residential Mortgage License Act of
1987, 38 Ill. Adm. Code 1050

Dear Mr. Cellini:

Thank you for the opportunity to comment on the Department's proposed amendments. We strongly support the Department's plan to regulate shared appreciation agreements. The proposed regulations will help protect consumers by providing valuable information and substantive protections. We also recommend a number of changes to address omissions and make clarifications that will improve the proposed rule. In this letter, we describe those recommendations.

1. Introduction

Shared appreciation agreements (SAAs)¹ are a new version of high-cost lending that poses a significant risk to homeownership and family savings. The SAA industry has put forth the false narrative that their products are not loans or debt and are not subject to existing law. The Illinois General Assembly took an important first step by amending 205 ILCS 635/1-4 to clarify that the term "Mortgage loan" . . . includes a loan in which funds are advanced through a shared appreciation agreement."² The proposed regulations appropriately elaborate on that amendment.

SAAs are becoming increasingly common nationwide, especially in markets where property values are rapidly climbing and producing significant equity appreciation. Their marketing is very tempting for "house rich, cash poor" borrowers, but they have the potential to be extremely expensive. The cost is obscured by complex contracts that most consumers do not understand. SAAs were created by sophisticated Wall Street investors for the purpose of giving investors low-risk access to homeowner equity. But the risk to the homeowner is unreasonably high.

¹ The lending industry refers to SAAs as home equity investments, but we will refer to them as SAAs in accordance with the Department and General Assembly's chosen terminology.

² Illinois Public Act 103-1015.

2. On paper, SAAs look different from traditional loans but are really just old wine in new bottles.

In a traditional “forward” mortgage loan, a lender provides the homeowner cash up front, and the homeowner agrees to repay it in predictable installments, no matter what happens to the value of the home. If the homeowner defaults, the lender can foreclose. Reverse mortgages also provide the homeowner with money upfront, but no payment is due on the loan until the homeowner ceases to live in the house. Forward and reverse mortgages are subject to extensive state and federal regulation to protect consumers.

High-cost forward-mortgage and FHA reverse-mortgage borrowers must attend HUD-approved counseling before closing.³ Most importantly, reverse mortgage borrowers have the right to stay in their homes indefinitely, as long as they remain current on their property insurance and taxes.

SAAs offer homeowners money up front in return for a share of the home’s future value. SAA borrowers are usually not required to make any payments to the lender until maturity or a trigger event listed in the contract, such as selling the property. This is similar to traditional reverse mortgages. But in an SAA, when the payment comes due, the borrower must make a balloon payment calculated as a percentage of the home’s value. If they do not pay by maturity, they face foreclosure. Some SAA lenders offer SAAs to help buy a home, but the most common ones today are offered to existing homeowners as a substitute for a traditional home equity loan or reverse mortgage.

SAAs are confusing and complex by design. On paper, they purport to be option agreements, where the lender claims to buy an option to purchase a share of the consumer’s house in the future. SAA lenders assert that if they never exercise the option, the consumer will not owe anything on the contract. Based on this premise, the lender claims it is not making a loan—just buying an option. In reality, the lender almost always exercises the “option.” When it does so, it becomes a co-owner of the home and requires the consumer to pay a share of the property’s value, often plus the original amount advanced.

When the lender exercises the option, the homeowner must buy the lender’s share back or, more often, put the house up for sale. By this time, the lender’s share will typically be worth tens or hundreds of thousands of dollars more than what the homeowner originally received for it. This substantially reduces the homeowner’s share of the equity in their own home and prevents the homeowner from building wealth that could be used for retirement or passed on to their children.

SAA lenders often advertise that the transaction is not a loan and that the homeowner will not owe anything if the home loses value. But lenders use sophisticated models to predict home values and securitization to insulate themselves from bearing any risk. **In practice, these SAA lenders will almost always get repaid.**

³ 15 U.S.C. § 1639(u); 12 U.S.C. § 1715z-20(d)(2)(B).

For example, Unison, one of the first and largest SAA lenders, has described itself as an “institutional investment management firm,”⁴ with sophisticated “model, systems, and processes [it] build[s] to make investments,”⁵ including “a 10-year forecast on every house in America.”⁶ Unison uses a “very sophisticated data infrastructure and pricing structure” to “turn[] a house into a security” in order to “build[] nationwide portfolios for the benefit of the institutional investor.”⁷ In its marketing to investors, Unison explains that its products have “unlimited upside and limited downside” as well as “low volatility and high risk-adjusted net returns compared to other major asset classes,”⁸ including traditional home secured loans.

Data from Washington State bears this out. According to a report commissioned by the Washington legislature, Washington’s Department of Financial Institutions found “that the average loss rate for [SAA] providers is no greater than the loss rate for traditional mortgage lenders.”⁹ But the average return on investment for Washington SAAs ranged from 16.7% to 19.5%.¹⁰ A national investment fund of SAAs reports a target internal rate of return of 14-17% and an average of 21% on realized SAA payoffs.¹¹

One of the reasons SAAs pose a risk to homeownership is that lenders do not underwrite for ability to repay. Instead of ensuring that the borrower has enough income to repay the debt, they count on the value of the property as the source of repayment.¹² So, if the borrower ultimately cannot repay the loan from their savings or by refinancing with a traditional mortgage, they will lose their home. SAAs are asset-based lending—a high risk form of lending that is disfavored in the residential context and that has contributed to multiple foreclosure crises.¹³

⁴ Podcast Transcription Session No. 103 – Thomas Sponholtz & Jim Riccitelli, <https://www.fintechnexus.com/wp-content/uploads/2022/09/Podcast-103-Unison-Founders.pdf> (last visited June 13, 2024).

⁵ Unison IM, <https://www.unisonim.com/> (last visited June 7, 2024).

⁶ Podcast Transcription Session No. 103 – Thomas Sponholtz & Jim Riccitelli, <https://www.fintechnexus.com/wp-content/uploads/2022/09/Podcast-103-Unison-Founders.pdf> (last visited June 13, 2024).

⁷ *Id.*

⁸ Unison IM, <https://www.unisonim.com/about-us> (last visited June 7, 2024).

⁹ Wash. State Dep’t of Fin. Institutions, Home Equity Sharing Agreement Inquiry Report at 20 (Sept. 12, 2024).

¹⁰ Mariana Amorim, et al., Home Equity Sharing Agreements in Washington State, Univ. of Washington at 5 (July 2025).

¹¹ Homeshares, U.S. Home Equity Fund Overview (undated) (on file with NCLC).

¹² See Morningstar DBRS, Rating and Monitoring U.S. Reverse Mortgage Securitizations at 24 (July 2023) (“Like reverse mortgage loans, the HEI underwriting approach is asset-based, meaning there is greater emphasis placed on the value of the underlying property than on the credit quality of the homeowner. The property value is the main focus for predicting repayment because it is the primary source of funds to satisfy the obligation.”)

¹³ See *generally*, OCC, Comptroller’s Handbook, Asset-Based Lending (Jan. 27, 2017), available at <https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/asset-based-lending/pub-ch-asset-based-lending.pdf>.

In practice, SAAs function very much like subprime mortgages with tremendous balloon payments. The consequences for consumers are the same too. If they are able to pay, they will lose a massive amount of equity. And if they cannot pay, they will lose their home to foreclosure. In fact, the payment structure for the typical SAA makes it highly likely that most borrowers will be forced to sell their home to make the payment due.

3. Recommended improvements to proposed regulation

3.1 Revise the rate cap provisions (1050.2310(f)).

3.1.1 *The proposed rate cap is far too high.*

While we strongly support the decision to require contracts to impose a rate cap and to void those that do not, the proposed cap is much too high. Proposed § 1050.2310(f) sets a rate cap of 36%, by reference to 815 ILCS 123/15-5-5. Such a cap is obscenely high for a secured loan.

The 36% cap was adopted for unsecured payday loans and is inappropriate for SAAs. Consider that the prime rate for a 15-year mortgage (close to the 10-year term for most SAAs) is currently a little over 5.5%.¹⁴ At current rates, a 15-year, first-mortgage will become subject to federal enhanced protections for high cost loans¹⁵ if the APR exceeds roughly 12.2%, and a second-mortgage at 14.2%.¹⁶ Illinois should not allow secured balloon mortgages at more than double that rate.

3.1.2 *Clarify application and disclosure of the rate cap.*

The application and disclosure of the rate cap are confusing. There are three related provisions that should be clarified:

- Proposed § 1050.2310(f) says "The total repayment amount must be capped at a rate not exceeding the rate cap provided in [815 ILCS 123/15-5-5]."
- The disclosure form requires one of two alternative provisions. One says "no interest will be charged on the Transaction Amount" and the other would disclose an annual interest rate.
- The disclosure form also requires (when appropriate) a statement that "The agreement does not limit the maximum final payment amount. The final payment amount is limited only by applicable law."

¹⁴ For the week of Oct. 9, 2025, Freddie Mac reports the [Primary Mortgage Market Survey](#) rate for a 15-year fixed-rate loan as 5.53%.

¹⁵ I.e. the Home Ownership and Equity Protection Act (HOEPA), codified at 15 U.S.C. § 1639.

¹⁶ HOEPA is triggered when the APR for a mortgage exceeds the average prime offer rate for a comparable loan by more than 6.5 percentage points on a first mortgage, or 8.5 for a second mortgage. See National Consumer Law Center, *Truth in Lending* § 9.6.3.1.1 (11th ed. 2023).

In the first bullet, it is unclear what the rate is applied to in order to reach the maximum allowed total repayment. The second bullet appears to treat the potential for an annual interest rate on the Transaction Amount as something different from the rate cap mentioned in the first bullet. And the third bullet appears to contradict the first because § 1050.2310(f) requires a cap on the “total repayment amount” but the third bullet seems to allow an agreement that “does not limit the maximum final payment amount.” Is the “maximum final payment amount” different from the “maximum allowed total repayment.”

We recommend clearly imposing a specific rate cap that is applied as an annual rate to the Transaction Amount. That cap, or a lower one if stated in the contract, should be clearly disclosed to the borrower. In addition, the maximum possible Final Payment Amount (as defined in the proposed rule) should be calculated by applying the rate cap to the Transaction Amount for the full term of the SAA and should be clearly disclosed as well.

3.2 Prohibit lenders from discounting the starting property value (§ 1050.2320).

Some lenders discount the starting value of the borrower’s property. This is unfair and deceptive because SAA lenders advertise their product as being based on property value *appreciation*. The concept of appreciation is even embedded in the name of the product—shared *appreciation* agreements. But if a lender discounts the starting value, the lender still gets a share of the property value even if there is no appreciation, or even if the property value declines.

- For example, imagine the situation that many homeowners faced in the last foreclosure crisis: a homeowner must sell due to a job loss and their home has not appreciated in value, so they have no equity. If they signed an SAA that gives the lender 50% of their equity when the house was worth \$100,000, the borrower would owe nothing if the house was still only worth \$100,000 at sale, because 50% of zero is zero. But if the lender is allowed to discount the starting value to \$75,000, the borrower will owe \$12,500.

This is not only unfair and deceptive, but it contributes to the complexity of the product. Proposed § 1050.2320 should be changed to prohibit discounting the starting value.

3.3 Require pre-closing mortgage counseling; legal representation at the closing is not enough (§§ 1050.2310(j), 1050.2350).

We strongly recommend prohibiting SAA lenders from closing a loan until the borrower has received the counseling described in § 1050.2350. Although § 1050.2310(j) appears to require an attorney to represent the borrower at closing, closing attorneys do not provide the type of education and counseling that homeowners will need before signing an SAA. Federal law already requires housing counseling for HOEPA and reverse mortgage borrowers, and it would be reasonable to require counseling for

SAAs, which are similar in cost, structure, and risk. While an attorney could adequately advise a borrower on the merits of an SAA, closing attorneys are not required to do so. Housing counseling would better protect SAA borrowers.

3.4 Replace the amendment to § 1050.1272 with a new provision setting a minimum SAA term.

The proposed amendment to § 1050.1272 regarding balloon payments effectively sets a 5-year minimum term for SAAs. However, adding it to the existing section on balloon payments creates a problem. Section 1050.1272 defines a balloon payment as one “that is more than twice as large as the average of earlier scheduled monthly payments.” But SAAs do not have any scheduled monthly payments—only the final payment. As a result, the section as amended would prohibit lenders from making a high risk loan with a final payment of more than \$0.00 ($2 \times \$0.00 = \0.00) unless the payment is due at least 5 years after origination. While this is feasible, it would be clearer and improve readability to create a new section or subsection that simply prohibits making an SAA payable in less than five years.

3.5 The proposed scenario-disclosure table is similar to one that has been tested and found ineffective (§ 1050.2310(g)).

The proposed rule requires a disclosure table showing repayment scenarios for payoffs at 5-years, 10-years, and maturity on the agreement. This disclosure is similar to the Total Annual Loan Cost (TALC) rate disclosure table used for reverse mortgages pursuant to Regulation Z, 12 C.F.R. § 1026.33.¹⁷ SAAs have a payment structure that is similar to reverse mortgages,¹⁸ so it is appropriate to compare the two disclosures. In 2009, the Federal Reserve Board commissioned a study of the reverse mortgage disclosures using consumer focus groups.¹⁹ The researchers found:

In almost all cases, participants were unable to interpret the table. . . . After each round, ICF Macro and Board staff made revisions to the TALC rate table to try to clarify it for participants. Most of these changes were made to the explanatory text that accompanied the table, as well as table labels and column headings. However, none of these changes were effective; participants continued to be very confused by the TALC rates. Almost all interview participants also indicated that they would be unlikely to find this information helpful, and that including TALC information on the disclosure would decrease the usefulness of that form rather than increasing it. Because of continuing low consumer comprehension of the

¹⁷ An example is in Appendix K of Regulation Z.

¹⁸ See *Olson v. Unison Agreement Corp.*, 2025 WL 2254522 (9th Cir. Aug. 7, 2025) (finding SAA contract “effectively creates the substance of a shared-appreciation reverse mortgage”).

¹⁹ ICF Macro, Summary of Findings: Design and Testing of Truth in Lending Disclosures for Reverse Mortgages (July 2010), available at [https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20100816_Reverse_Mortgage_Report_\(7-28\)_FINAL.pdf](https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20100816_Reverse_Mortgage_Report_(7-28)_FINAL.pdf).

TALC rate table, Board staff decided not to include it on its proposed model forms.²⁰

While there are differences between the Department's proposed table and the TALC table, we believe they are close enough to conclude that the proposed table will be confusing to consumers and will decrease the usefulness of the disclosure form rather than increasing it.

We encourage the Department to delete this part of the proposed disclosure. As designed, it will present a large amount of speculative detail over 30 cells and is more likely to overwhelm consumers than help them. As the Federal Reserve Board found, consumers are also likely to misinterpret the details. In addition, some of the scenarios will be highly unlikely for most borrowers. The first two rows show a 10% decline in property value and 0% appreciation. But such results will be very rare because SAA lenders only lend on properties that their research shows are likely to have significant appreciation.

The design of the table may also be harmful because it puts the -10% and 0% rows at the top, where borrowers are most likely to see them. Behavioural economics research shows that "individuals often anchor on the first piece of information provided, form initial judgments, and then fail to update those judgments to account for subsequent information."²¹ If this applies to borrowers reading the proposed disclosure, they may anchor on the lower payments shown in these rows and underestimate the cost of the more expensive scenarios below. Another risk is that borrowers simply won't read the whole table and will stop after the first row or two. If the Department continues to believe this table is necessary, we urge conducting user studies to verify that it will be helpful and to modify the design as appropriate.

As described in the next section, there is far more useful information that is missing from the disclosure and should replace this table.

3.6 Cap the maximum possible final payment, then require and clarify its disclosure.

The proposed disclosure form requires (where appropriate) the statement "The agreement does not limit the maximum final payment amount. The final payment amount is limited only by applicable law." We find several problems with this statement. The most significant is that the final payment should always be limited. If the Department adopts a clear rate cap, that will serve as a limit on the payment amount. Uncapped payments will give lenders the opportunity for a windfall at borrowers' expense and at usurious effective rates. Borrowers bear all the expense of shared appreciation agreements. They pay origination fees, closing costs, taxes and insurance

²⁰ *Id.* at iv.

²¹ Rajesh Bagchi and Derick F. Davis, \$29 for 70 Items or 70 Items for \$29? How Presentation Order Affects Package Perceptions, 39 J. of Consumer Research 62, 64 (June 2012), <http://www.jstor.org/stable/10.1086/661893>.

on the property, and maintenance. They deserve the protection of a rate and payment cap.

The ambiguity of this disclosure is also a problem. If “applicable law” provides the only limit, the limit should be expressly stated as a numerical value based on the actual transaction. The proposed disclosure leaves consumers to guess at what the applicable law may say.

Finally, aside from the APR, the maximum possible payment amount is the single most important disclosure the Department could require. Housing counselors will use this to help borrowers compare other options, and if they choose the SAA, understand that they may need to sell their home to make the required payment. Yet, this information will be obscured by other information in the proposed scenario table and only alluded to in this disclosure. Instead, **the maximum final payment should be in a large, bold font near the top of the disclosure.** Borrowers need to know how much money is at risk—because they may ultimately be required to write a check for that amount. This single number will convey more information to borrowers than the proposed, overly busy table.

3.7 The disclosure regarding interest charges is deceptive.

One of the optional disclosures on the proposed form says “You will share a portion of the property's . . . Value, but *no interest will be charged* on the Transaction Amount and there will be no monthly payments due” (emphasis added). The statement that no interest will be charged is deceptive because an SAA is far from a zero-interest loan. Borrowers will likely pay a substantial premium for the Transaction Amount. While this premium is not “interest” in the same sense as a contractual rate applied to a principal amount, the SAA will ultimately have an effective interest rate. The payment due on an SAA is, from the consumer’s perspective, no different than the payment due on a traditional, interest-bearing reverse mortgage. Telling consumers that this is a no-interest loan is deceptive.

3.8 Strengthen and clarify the definition of Shared Appreciation Agreement.

The proposed definition of “shared appreciation agreement” includes the new statutory definition from Public Act 103-1015 but not the amended definition of “mortgage loan.” The General Assembly amended the definition of “mortgage loan” because the SAA industry falsely asserts that its product is not a loan. While Public Act 103-1015 corrects this misperception, we believe the proposed regulations would be stronger if the definition of SAA clearly stated that SAAs are mortgage loans. That could be accomplished by simply adding such a sentence to the end of the proposed definition.²²

²² The Act add the sentence “‘Mortgage loan’, ‘residential mortgage loan’, or ‘home mortgage loan’ includes a loan in which funds are advanced through a shared appreciation agreement.”

3.9 Several changes are needed to improve readability.

3.9.1 *Section 1050.2310(a)(2) and (4) and the definition of “lender.”*

Although we recommend amending the definition of SAA to restate that SAAs are mortgage loans, we recommend simplifying other parts of the proposed rule that use the phrase “a mortgage loan made under a shared appreciation agreement.” That phrase appears in § 1050.2310(a)(2) and (4) and the definition of lender. But it is redundant because the statute defines “mortgage loan” as including shared appreciation agreements.²³ We recommend simplifying the text by deleting the phrase “a mortgage loan made under” from § 1050.2310(a)(2) and (4) and deleting the definition of “lender” entirely, because it is already provided by statute. Alternatively, if the Department desires more specificity for the purposes of this rule, the definition of “lender” could be changed to create a subset of lenders based on the language in 205 ILCS 635/1-4(f) and (g). We recommend the following definition:

“Lender” shall mean any person, partnership, association, corporation, or any other entity who either lends or invests money in residential mortgage loans in which funds are advanced through a shared appreciation agreement

3.9.2 *Replace the term “annualized cost” with “annual percentage rate.”*

The proposed rule defines the term “annualized cost” and requires its use in the disclosure table. If the Department does not delete the table entirely, as we recommend, the Department should simplify the disclosure by merely referring to the “annual percentage rate” rather than the annualized cost. It appears that the annualized cost is simply the APR by another name.²⁴ And using two different names for the same figure will only confuse consumers.

3.9.3 *Clarify and relocate § 1050.2310(j).*

The meaning of § 1050.2310(j) is unclear. It is in the section entitled “required disclosures” and states “The borrower to be represented by an independent attorney of the borrower's choice and at the lender's expense at closing.” Does this mean the borrower must be represented by an independent attorney at closing? We strongly recommend such a requirement. However, the word “must” should replace “to”. This provision should probably also be in a separate section because it is a substantive requirement rather a mere disclosure.

²³ Illinois Public Act 103-1015.

²⁴ See, e.g., § 2310(a)(2)(B) (requiring lenders to “calculat[e] the annualized cost based on the term in each scenario within the form in Appendix C of this Part using the method prescribed in 12 CFR Part 1026 Appendix J for calculating an annual percentage rate.”).

4. Conclusion

Homeownership is important because it gives families security, safety, and a chance to build wealth. But it is more important because it provides a home. SAAs can take that away. The Department has proposed a strong rule, but it should be made stronger by clarifying the applicable rate cap, improving the disclosures, and clarifying the text of the rule.

Thank you for your time.

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