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Consumer Law
Center**

*Fighting Together
for Economic Justice*

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Laurie Goodman, Institute Fellow
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Dear Dr. Goodman,

I am writing on behalf of the National Consumer Law Center regarding your February 2026 [research report](#) (“Report”) on “shared equity products,” commonly known as “home equity investment loans” (“HEI loans”).

We urge you to revise the Report to retract the inaccurate legal conclusions that HEI loans are not loans and cannot be regulated under mortgage laws, and to provide, at minimum, an acknowledgement that the Report does not provide a meaningful examination of the critical issues described below regarding the risks of HEI loans for homeowners, including housing instability and home loss. The Report’s limitations include: (1) lack of examination of the effects of HEI loans on homeowners after day one, including the Report’s failure to meaningfully address the CFPB and Washington state Report findings in this regard; (2) lack of discussion of the emerging consensus among courts and state regulators that the product constitutes mortgage credit (and that the Report erred in stating that HEI loans are not mortgages); and (3) an absence of any meaningful engagement on the question of how mortgage regulations can be applied to this product (in light of the fact that regulators and state legislatures are in fact applying mortgage regulations to them and the factors cited in the Report are not, in fact, barriers to mortgage regulation).

Although the Report focuses on how these products function as tools for “equity extraction,” the study examines only a narrow slice of a transaction—the point of origination—and does not analyze what happens when these loans come due, a key omission. The significant harms of this product and the fundamental threat to homeownership and housing stability are only visible when the borrower’s payment comes due. As discussed in detail below in section I, while the product appears manageable at origination, it will, in practice, impose a large balloon payment that will jeopardize homeowners’ financial stability and pose a severe risk to the homeowner’s ability to retain their home or acquire a new one. Because the Report does not address the consequences to homeowners when the large balloon payments come due or acknowledge the limited data on homeowner outcomes at the time of payment, the Report presents an incomplete and misleading picture. Consequently, its conclusions are unreliable as a basis for policymaking.

For example, as the Report notes, approximately one quarter of HEI homeowners are unable to obtain a traditional mortgage loan. That fact raises an urgent question: what happens to these homeowners when repayment is triggered and refinancing remains out of reach? The Report does not answer this question—and does not adequately acknowledge that it cannot. The Report adopts industry-promoted assumptions without examining their real-world effects.

As discussed further in section II below, the Report also contains inaccurate statements about the legal landscape and omits key information about this product from the [CFPB](#)¹ (“CFPB Report”). The HEI loan industry is already using this Report in multiple states to argue that the product is beneficial to homeowners and falls outside the scope of mortgage laws. Yet the legal reality on the ground is the opposite of industry’s claims (which the Report uncritically repeats): Courts and regulators have increasingly recognized that HEI loans function as credit and are subject to existing mortgage laws.

The Report’s objectivity is further undermined because the Urban Institute relied on industry data for the Report and receives funding from the HEI loan industry through Urban’s Housing Finance Innovation Forum. This one-sided analysis, alongside these other facts, creates at least the appearance of bias—departing from the otherwise rigorous standards associated with the Urban Institute. Especially because HEI loan regulation is actively under consideration at both the federal and state levels, the Report must be accurate and complete. A Report that evaluates only the front end of these transactions, while ignoring their most consequential risks and the genuine legal status of the product, cannot serve as a sound basis for policy decisions.

I. The Report’s focus on origination obscures the severe downstream harm of HEI loans.

The Report emphasizes the ease of obtaining an HEI loan, especially for homeowners with low credit scores. This focus mirrors industry marketing. The Report gives little meaningful attention to the substantial obligations, constraints, and risks that HEI loans impose on consumers once the transaction moves beyond origination.

The following is a discussion of some of the more significant risks for homeowners not addressed in the Report.

A. Homeowner outcomes are not addressed, including large balloon payments and other costs, significant risk of home loss, and limits on future housing options.

The Report does not address the key concerns that homeowners, regulators, and consumer advocates have identified with HEI loans: these products are structured to require large balloon payments that many homeowners will not be able to afford without selling their homes, undermining housing stability and subsequent housing alternatives. The Report should be changed to highlight that these substantial issues are not examined.

¹ Consumer Fin. Prot. Bureau, *Issue Spotlight: Home Equity Contracts: Market Overview* (Jan. 15, 2025), (hereinafter “CFPB Report”), available at <https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-home-equity-contracts-market-overview/>.

1. Large balloon payments owed at the end of the loan and other high costs

The Report does not discuss the well-documented risks of balloon payments or the extensive regulation of balloon payments under the Truth in Lending Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). Expanding the use of HEI loans, which rely on balloons, risks triggering a wave of foreclosures or forced sales² when loan obligations come due and require full repayment at the end of their terms. The equity-extraction enabled by HEI loans often primarily benefits the investor and originator, frequently at the expense of the homeowner’s long-term housing stability.

Balloon payments on HEI loans pose a number of risks, including the inability for the homeowner to predict how much will be owed, the rapid escalation of the amount due, the lack of transparency around how they are calculated, and the high likelihood that homeowners will be forced to sell their homes when the payments come due (as discussed further below). When an HEI loan comes due, homeowners must make a balloon payment that is usually tens or hundreds of thousands of dollars more than the original amount of cash provided. This has been documented both through the experiences of actual homeowners and in an analysis in the comprehensive report on home equity sharing agreements conducted by the University of Washington (“Washington Report”).³

The Report only briefly acknowledges complaints about HEI loans in the Washington Report. The Report notes that some HEI borrowers feel trapped and fear that “they might be forced to sell their home at the end of the agreement to come up with the lump-sum payment and might not be able to buy another home with the remaining sale proceeds.”⁴ The Report also acknowledges consumer complaints made to the CFPB in which homeowners were confused about the terms, surprised at the amounts they had to repay, and faced difficulty refinancing because of the HEI lien.⁵ The Report, however, does not substantively analyze these complaints.⁶ In addition, the Report asserts that traditional loans have a higher rate of CFPB complaints than HEI loans, but the Report only considers complaints against the three HEI lenders contributing data to the study while there is a substantially larger pool of traditional lenders. And the Report does not address the fact that the majority of HEI loans originated have yet to mature or otherwise reach the point when the borrower’s payment comes due.

Some examples of the balloon-related problems created by HEI loans follow.

- It is instructive to look at the experience of Angela Roberts, a New Jersey homeowner. A single mother of a child with a disability, she was facing serious financial distress when she took out a loan from Unlock. Unlock advanced \$111,610—purportedly representing a portion, around 44%, of the home’s value, reduced by thousands of dollars in opaque fees—in exchange for a mortgage lien on her home and Unlock’s right to receive 70% of

² Many HEI loan contracts give the lender the power to sell the house without going through the foreclosure process if the borrower defaults.

³ *Home Equity Sharing Agreements in Washington State: Final Report*, at 2, Evans Sch. of Pub. Pol’y & Governance, Univ. of Wash. (July 2025) (hereinafter “*Washington Report*”).

⁴ Laurie Goodman & Katie Visalli, *How Shared Equity Products Work, Who Is Using Them, and Regulatory Recommendations*, Urban Institute at 3, (Feb. 26, 2026) (hereinafter “*The Report*”), available at https://www.urban.org/sites/default/files/2026-02/Final_How_Shared_Equity_Products_Work.pdf.

⁵ *The Report* at 3, *supra* note 4.

⁶ *The Report* at note 2, *supra* note 4.

the home's future value (capped at 18% compound growth) within 10 years or less.⁷ In just three-and-a-half years, her payment obligation to Unlock had ballooned to \$202,525—more than 90% over the original advance—and it kept increasing every year.⁸ Paying off Unlock would have required her to sell her home in addition to bearing the entirety of the tens of thousands of dollars of sale costs. Unlock ultimately settled with Ms. Roberts after a federal judge indicated that she would rule that the company's product functioned as a disguised residential mortgage loan under the Truth in Lending Act.⁹

- Charles Boyd and Janine Olson, two Washington seniors caring for an adult son with a disability, were similarly trapped in an HEI loan. They had been diligently paying off their first mortgage for decades. In 2019, facing diminishing income and rising costs, they took out a loan from Unison. The company advanced them \$64,750 in 2019 (minus thousands in opaque fees).¹⁰ Five years later, their payment obligation had risen to \$229,143.¹¹ Between that payment, their first mortgage, and the fact that the Olsons would have to cover the entirety of the costs of selling the home (tens of thousands of dollars), they would receive very little for a home they had been paying off since the 1980s.¹² Unison settled the Olsons's case after a panel of three federal appellate judges unanimously held that the company's product was a hidden mortgage loan under Washington law and that the Olsons had sufficiently alleged that Unison had engaged in deceptive marketing.¹³

These examples underscore the risks of HEI loans that are not addressed in the Report: rapidly escalating balloon payment obligations, lack of transparency, and the real possibility that homeowners will be forced to sell their homes to satisfy these agreements.¹⁴

The Report, however, does not include any data about outcomes for homeowners when payments come due. Thousands of these products have likely settled by this point. The Report text does not indicate whether settlement data were not provided by the CHEP companies, not requested, or not analyzed. It is also unclear why the Report did not engage with already

⁷ *Roberts v. Unlock*, 1:24-cv-01374, Dkt. 79 at 7-8 (D.N.J. March 20, 2025).

⁸ *Roberts*, Dkt. 93 at 4-6 (D.N.J. June 26, 2025).

⁹ *Roberts*, Dkt. 106 (D.N.J. Dec. 10, 2025) (Unlock withdrawing arguments after hearing before judge); Dkt. 126 at 10, 14 (judge noting that withdrawal of Unlock motion "seems to me strategically to be done solely because the Court apparently gave an indication that—and I think I was pretty clear in the pointed questions I asked, that it would likely not be a favorable decision," and the withdrawal "doesn't seem to me to really be made in good faith").

¹⁰ *Olson v. Unison Agreement Corp.*, No. 23-2835, 2025 WL 2254522, at *1 (9th Cir. Aug. 7, 2025).

¹¹ *Olson*, Dkt. 12.1 at 33.

¹² *Olson*, 2025 WL 2254522, at *2.

¹³ *Olson*, 2025 WL 2254522, at *5. CHEP has incorrectly asserted that this decision was vacated, but the court merely granted a request to "dismiss" the appeal after a settlement, which is distinct from a "request to vacate the ... opinion." *Navajo Nation v. U.S. Dep't of the Interior*, 907 F.3d 1228, 1229 (9th Cir. 2018).

¹⁴ While homeowners face these risks, the Washington Report found that HEI lenders' "annualized ROIs [returns on investment] range from 16.7% to 19.5%." And that was without "account[ing] for fees to homeowners at origination," which are typically in the thousands of dollars. *Washington Report* at 18, *supra* note 3.

existing descriptions of settlement outcomes, such as the Washington Report, or simply acknowledge that these risks are not being examined in the Report.

In any event, without such data, the Report's analysis does not empirically capture the most significant harm to homeowners from entering into these products. Given this key omission, the Report cannot evaluate the harms of HEI loans for homeowners nor the kind of regulation necessary.

In addition, the Report does not address other high costs that HEI loans impose on borrowers. As noted in the CFPB Report, home equity contracts are expensive compared to other home-secured financing options. "Home equity contracts often carry features that boost the settlement amount due from the consumer and insulate home equity contract providers from losses in all but extreme home price declines."¹⁵ HEI lenders also charge significantly higher closing costs than traditional lenders. According to a [Bankrate.com](https://www.bankrate.com) analysis, the national average charge for closing costs on traditional mortgages was 1.6%, including taxes and origination fees.¹⁶ But according to the Report, HEI lenders charge an origination fee alone of 3.9% to 4.9%.¹⁷

2. The sale of the home as the primary—and often only—means of payoff

Balloon payments are especially risky because, in practice, most homeowners will only be able to make this payment by selling their home or refinancing with a traditional loan. But because HEI loans are marketed to credit-constrained homeowners, many homeowners will not have the option of refinancing and will be forced to sell when the loan comes due. Moreover, the size of the HEI loan payment will deprive them of the money needed to buy a new home.

In an enforcement action brought by the Massachusetts Attorney General against Hometap, one elderly homeowner, Susan Ellis, described her situation:

My husband and I built our house and would like to stay here. I would like to leave this house to my children, but it seems like that will not be an option. Likely we will need to sell our home within the next few years to pay Hometap. We definitely need to repay Hometap through a sale of our home because there is no other way we could pay it off. After we sell, I don't know what we're going to do. We likely won't have enough money for a down payment on a condo or a smaller home, and rents in my area have gone way up. Sometimes I think it would be easier if we passed away before we had to deal with this.¹⁸

Other homeowners in the litigation described the same situation.¹⁹ These significant harms, which HEI loans can and have caused for borrowers, must be factored into any evaluation of the safety and utility of the product.

As the Report mentions, a significant number of HEI homeowners have less-than-prime credit scores²⁰ and about one quarter of them were, according to the study's data, ineligible for a

¹⁵ CFPB Report at 2, *supra* note 1.

¹⁶ David McMillin, *Average Closing Costs by State in 2025*, Bankrate (Sept. 11, 2025), available at <https://www.bankrate.com/real-estate/average-closing-costs-by-state/#how-much>.

¹⁷ *The Report* at 18, *supra* note 4.

¹⁸ Complaint Ex. D, *Commonwealth v. Hometap Equity Partners, LLC*, No. 2584-cv-00469-BLS2 (Mass. Super.), available at <https://www.mass.gov/doc/commonwealth-v-hometap-equity-partners-llc/download>.

¹⁹ *Id.* at Exs. C, F.

²⁰ *The Report* at 8, *supra* note 4.

mortgage when they first obtained their HEI loan. For those homeowners, refinancing is not an option. Even homeowners with stronger credit scores and higher incomes can struggle to refinance, because the large repayment obligation under an HEI loan often makes it difficult to meet required debt-to-income and loan-to-value ratios—particularly when they also carry a traditional first mortgage. As a result, homeowners who might otherwise qualify for refinancing can find themselves effectively shut out, leaving sale of the home as the only viable means of repayment, a risk clearly identified in the CFPB Report²¹ and in the Washington Report.²²

3. Severe limits on subsequent housing options

HEI homeowners will also face significant constraints on their future housing choices because the HEI balloon payment strips away a significant portion of their equity at payoff. Compounding this harm, HEI loan companies typically require the homeowner to cover 100% of the closing costs when selling the home—even when the company gets the majority share of the home’s value. This can amount to tens of thousands of dollars in brokers’ fees, federal, state, local, and transfer taxes, as well as recording fees, reconveyance fees, escrow fees, and title insurance fees.

The result is that, after a sale, a homeowner will have considerably fewer resources to purchase a replacement home or use toward a security deposit and ongoing rent. There also will be fewer funds available to pay for family expenses, including paying for an increased level of care for aging or disabled members of the household. The lack of housing options will be a particularly serious problem for older adults who had planned to downsize and age-in-place and for any homeowners with limited income. This harm is further compounded by the fact that the loan is marketed up front as a benign way to access home equity.

B. HEI loans also interfere with other rights of homeownership.

The Report also does not address other significant risks to homeowners from HEI lending, including interference with first mortgage loss mitigation, attempted limits on access to the judicial system, the inability for heirs to assume the loan and stay in the home, limitations placed on use of the home, product complexity, misleading advertising, and the attendant risks associated with financing unsecured debt into home-secured debt. The Report should be updated to reflect that these significant risks to homeowners are not addressed.

1. Inability to obtain payment relief when facing hardship

The Report also omits another critical risk faced by homeowners with HEI loans: their inability to obtain relief when struggling with an existing first mortgage. If a homeowner with an HEI loan encounters difficulty on an existing first mortgage and seeks a modification of that mortgage to reach an affordable payment, often the first mortgage holder will either refuse the modification due to the existence of the HEI mortgage or will require that the HEI lender subordinate its interest in the home. HEI loan contracts, however, do not obligate the company to agree to subordination; it is entirely at the HEI lender’s discretion, and homeowners Report that HEI lenders have refused requests for a subordination. This is a home-threatening risk for already credit-impaired homeowners who enter into HEI loan contracts. The refusal to subordinate also poses a problem for a homeowner who wants to refinance their first mortgage to a lower interest

²¹ CFPB Report at 3, 17, 20, *supra* note 1.

²² Washington Report at 36-37, 43, *supra* note 3.

rate. They are dependent on the HEI lender's voluntary agreement to subordinate their mortgage, which is reportedly often withheld.

2. Lack of access to the judicial process

Most HEI loan contracts try to deprive homeowners of the ability to enforce their rights in court. They purport to do so by including forced individual arbitration clauses in their contracts—often requiring the homeowner to pay additional costs many cannot afford. Notably, the Dodd-Frank Act prohibits mortgage loans from including such clauses, which may be one reason why the HEI loan industry argues their product is not a loan.

Arbitration tends to favor the repeat players—typically the companies—over individuals.²³ Mandatory arbitration clauses also try to prevent consumers from proceeding together in a class action, meaning that homeowners who are often already in financial distress would have to litigate one-on-one against multi-million-dollar financial technology companies. For most homeowners, this would be so prohibitively expensive that they are left without any forum to vindicate their rights.

While courts have indicated that arbitration clauses in HEI loan contracts are illegal and unenforceable, companies continue to attempt to enforce them against homeowners.²⁴ Notably, many HEI loan contracts also require homeowners to waive their rights to a jury trial. The Report is silent on these essential issues.

3. No options for heirs

In many HEI loan contracts, the death of the homeowner will trigger a “settlement event” requiring immediate full payment on the HEI loan. As a result, surviving family members residing in the home will most likely be forced to sell. This is contrary to the requirements of the Garn St. Germain Act,²⁵ which entitles them to assume and maintain an existing first mortgage. The CFPB's RESPA mortgage servicing rules also make specific accommodations for heirs and other successors to obtain payment information and a loan modification where needed. This is a major, foreseeable risk to homeowners' families and should be considered in any discussion of the benefits of HEI loans.

4. Strict limitations on the use of the home and additional obligations

The Report does not address the restrictions that HEI loan contracts place on homeowners. These affect the borrower even before payoff. In addition to the usual obligation to maintain the property and to pay taxes and insurance, HEI loan contracts tend to impose other restrictions:

²³ See Mark Egan, et al., *Arbitration with Uninformed Consumers*, Graduate School of Stanford Business, Working Paper No. 3768 (Oct. 2018), available at <https://www.gsb.stanford.edu/faculty-research/working-papers/arbitration-uninformed-consumers>; Alexander Colvin and Mark Gough, *Mandatory Employment Arbitration*, Annual Review of Law and Social Science, Vol. 19 at 131-144 (October 1, 2023), available at <https://ssrn.com/abstract=4605746>; *The Arbitration Trap: How Credit Card Companies Ensnare Consumers*, Public Citizen (2007), available at <https://www.citizen.org/wp-content/uploads/arbitrationtrap.pdf>.

²⁴ National Consumer Law Center, *Courts Expose Deception of Home Equity “Investments”* at 10 (Aug. 15, 2025), available at <https://library.nclc.org/article/courts-expose-deception-home-equity-investments>.

²⁵ [12 U.S.C. § 1701j-3](#).

- prohibiting a homeowner from moving or spending extended periods not living in the home, thereby, for example, preventing members of the military from continuing to own the home when they are stationed elsewhere;
- prohibiting a homeowner from renting out all or a portion of their home, or imposing significant penalties if they do so, which limits the homeowner's ability to derive rental income from the property;
- limiting the homeowner's ability to operate a business out of their own home (potentially limiting their income);
- preventing the owner from taking out any other loans on the home without permission, including: additional draws on existing HELOCs; a rate-and-term refi on existing mortgages; or, as discussed above, getting a loan modification on an existing mortgage to avoid foreclosure (undermining the homeowner's ability to stabilize their finances);
- requiring the homeowner to maintain the property at or above the condition that the lender requires or face penalties and not permitting the homeowner to recoup the full amount of any investments in home improvements;
- limiting the homeowner's ability to pay off the loan through the imposition of significant prepayment penalties;
- establishing a duty to notify the lender if the homeowner gets divorced (potentially triggering a home sale that would not be required under a traditional mortgage product); and
- creating a duty to answer the lender's questions about the status of the home (as a landlord, not mortgage company, might more typically require).

5. Complexity of HEI loan contracts as a barrier to understanding

The CFPB Report also notes that home equity contracts are complex financial contracts that can be difficult to understand or compare to other options, an issue exacerbated by the industry's refusal to use the TILA/RESPA disclosures used for traditional mortgages. As the CFPB Report notes, "a review of complaints showed homeowners that felt frustrated or even misled about various aspects of home equity contracts—including confusion about the financing terms, surprise at the size of the repayment amounts, disputes about appraisal values, difficulty with refinancing due to the existence of the home equity contract, and frustration that they felt their only option to get out of the contract was to sell their home."²⁶

As noted above, the number of consumer complaints that the CFPB has received likely reflects that these are novel products with consequences that homeowners often do not truly understand until several years down the line. Key terms—such as how the payoff is calculated, the impact of appreciation, and the triggering of repayment events—are often complex and not clearly understood by homeowners at the outset. Many of the HEI loan contracts are 70 or more pages long. As a result, homeowners may enter into HEI loans without fully appreciating that these products can function much like high-cost, home-secured credit with serious implications for their ability to retain their homes. Homeowners may also not be aware that they are

²⁶ CFPB Report at 3, 20, *supra* note 1.

protected by lending and mortgage laws enforced by the CFPB, as some of these companies' contracts tell homeowners that such laws do not apply.

6. Misleading advertising

The Report does not consider or address the risk that deceptive and misleading marketing, a practice that can violate state and federal law, traps homeowners in these products without understanding the dangers. HEI loan marketing often makes deceptive statements emphasizing “no interest” and “no debt,” while downplaying the fact that the obligation is secured by the home and will grow substantially over time. This framing obscures the reality that homeowners are taking on a significant payment obligation, that they have difficulty predicting that payment, and that it is structured to far exceed the amount the homeowner received upfront. Courts have already recognized that these kinds of statements are deceptive.²⁷

HEI loan companies also often advertise their products as “partnerships” between the company and the homeowner.²⁸ However, the fine print in contracts by these same companies expressly states that the companies are not partners with homeowners. That is because partners are legally required to act in each other's' interest, and these companies disclaim any responsibility to do so. Instead, they systematically act in ways that harm their supposed “partners”—the homeowners—to the benefit of the company.²⁹

7. Increased risk of housing instability and home loss from converting unsecured debt into home-secured obligations

The Report suggests that using HEI loans to pay off unsecured debt “can be a beneficial economic move for many homeowners” because rates are “often significantly lower than the interest rate on credit card or personal loan debt”³⁰ But this comparison ignores many important reasons why converting unsecured debt to home-secured debt can be harmful to the homeowner— a dynamic that has proved deeply harmful in previous home equity lending products, including those leading up to the enactment of the Truth in Lending high cost mortgage rules and the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA).

Most importantly, defaulting on an unsecured debt is unlikely to lead to loss of the debtor's home. In the case of HEI loans, however, the ballooning repayment amount makes it harder for the consumer to pay off the loan and, therefore, makes it more likely that the consumer will be forced to sell, as described above. Unsecured debts can generally be discharged in bankruptcy, providing a critical safety valve for distressed homeowners. In contrast, HEI loan contracts set

²⁷ See, e.g., *Olson v. Unison Agreement Corp.*, No. 23-2835, 2025 WL 2254522, at *5 (9th Cir. Aug. 7, 2025) (“[W]e conclude that the Olsons have adequately alleged that the statement that ‘no interest’ was involved is deceptive.”); *In re Stone*, 671 B.R. 752, 756 (Bankr. D. Colo. 2025) (same as to other marketing statements).

²⁸ Equity Sharing Agreement, Unison, <https://www.unison.com/equity-sharing-agreement> (“Unison is your partner, here when you need us.”); How it Works - Unison Equity Sharing – Homeowner, YouTube, https://youtu.be/KG7ygY6_sWM?feature=shared&t=42 (“This is a partnership, fair and square.”). And Unlock's company title is “Unlock Partnership Solutions” and it claims to be “a partner in homeownership.” *Unlock Product Guide* at 25, <https://www.unlock.com/app/uploads/product-guide-260227.pdf>.

²⁹ See, e.g., 59A Am. Jur. 2d Partnership § 270.

³⁰ *The Report* at 3-4, *supra* note 4.

forth that bankruptcy is a “default” condition that enables them to force a sale of the property while also asserting that the obligation itself cannot be discharged.

II. The Report does not scrutinize disputed industry legal assertions or analyze the applicability of mortgage regulation.

Throughout the Report,³¹ there are assertions of the disputed legal conclusion (and industry position) that HEI loan products are not loans and are not regulated under existing mortgage rules. Yet the Report provides no legal citation or analysis and does not even acknowledge that this assertion is disputed. The legal conclusion is, at best, heavily legally contested. In fact, a clear consensus has emerged among recent court decisions and amongst regulators that the current generation of HEI loan products *are* subject to existing federal and state mortgage lending laws.

A. HEIs are *loans* not “investments.”

The Report³² uncritically accepts the HEI loan industry’s claim that HEI loans are not mortgage loans, repeatedly referring to them as “shared equity products” and contrasting them with “mortgage loan-based equity extraction options” without examining the legal disputes over their classification or the implications for borrower protections. This proposition has been rejected by an emerging consensus of courts and regulators. As described further below, state regulators, state legislatures, and courts have nearly uniformly found that HEI loans are actually loans. This is important because whether HEI loans are loans determines how they are regulated, how they are marketed, and how consumers consider them when shopping for financing, as well as consumers’ ability to enforce their rights in court rather than be subject to forced arbitration.

The industry’s argument that HEI loans are not loans is based on an assertion in the contract that the lender is merely purchasing the “option” to later buy a share of the borrower’s home, which is simultaneously sold through operation of the contract for cash proceeds. The industry claims that, because they might never exercise the option, the homeowner might never have to pay anything, and the contracts are therefore not a debt or loan. But that claim is just a mirage. In practice, the contracts are structured such that the lenders will virtually always realize income from exercising the option; as a result, the lenders exercise the option and demand payment so often that HEI loans are no different than a traditional mortgage, such as a single-payment reverse mortgage.

B. HEI loans are subject to state and federal lending laws.

The Report uncritically asserts, without any legal citations, a core litigation position of the HEI loan industry, that “[Shared Equity Products] are not subject to the Truth in Lending Act or the Real Estate Settlement Procedures Act, as SEPs are not considered ‘credit’ under the Truth in Lending Act.”³³

As noted in the previous section, this statement is—at best—in serious question and, in many regards, plainly incorrect. In the states that have passed laws clarifying that HEI loans are residential mortgage loans or where courts have held that these products are mortgage loans

³¹ See, e.g., *The Report* at 3 & 27, *supra* note 4.

³² See, e.g., *Urban Institute Report* at 3, 5 & 27, *supra* note 4.

³³ *The Report* at 27, *supra* note 4.

under state law, these products are likely subject to both the federal Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) because both federal laws will look to state law regarding the question of whether a contract creates a loan or a credit obligation.³⁴ Further, HEI loans generally qualify as loans under existing state laws and definitions of “loans” or “credit” even for those states that have not directly addressed the question.³⁵

In litigation, courts have generally found that the current generation of HEI loans do, in fact, create a debt and are loans subject to both state and federal lending laws.³⁶ While the industry often cites a single older lower court decision, *Foster v. EquityKey*, that case involved a different product offered by a company that no longer exists.³⁷ It was also an unpublished lower court decision by a magistrate judge located in the Ninth Circuit, which has more recently rejected the industry's arguments in the *Olson* decision cited above.

The Report also does not address the contrary rulings and other actions of state legislatures and regulators. Many state legislatures and regulators have already made clear that HEI loans are subject to lending laws and have enacted specific protections; and other states have pending provisions. Specifically, the following states have taken action:

- Connecticut: [Conn. Gen. Stat. Ann. § 36a-485\(27\), \(30\)](#);
- Illinois: [205 ILCS 635/1-4\(f\), \(ccc\)](#);
- Maine: [Advisory Ruling #122 \(Oct. 29, 2025\)](#)³⁸;
- Maryland: [Md. Code Ann., Fin. Inst. § 11-501\(m\)\(2\), \(r\)](#);

³⁴ See 12 U.S.C. § 2602(1) (using the word “loan” without providing a definition); 12 C.F.R. § 1026.2(b)(3).

³⁵ While one letter from the Pennsylvania bank regulator to an HEI lender concluded that the product appeared to fall outside of the state’s mortgage laws, the opinion was based only on the information provided by the company itself. In 2020, the Pennsylvania Department of Banking and Securities responded in a letter to an inquiry from Unison that, based on information provided by Unison, Unison’s HomeOwner and HomeBuyer programs fell outside the parameters of the Pennsylvania Loan Interest and Protection Law (LIPL) because such programs did not create an obligation to pay a sum of money in an original bona fide principal amount per the statute. A bill clarifying that HEIs are mortgage loans covered by the LIPL is currently pending in the PA legislature. See HB2120 <https://www.palegis.us/legislation/bills/2025/hb2120>.

³⁶ See, e.g., *Olson v. Unison Agreement Corp.*, No. 23-2835, 2025 WL 2254522 (9th Cir. Aug. 7, 2025) (Washington state laws apply); *Muskal v. Point*, CV 2025-024855, Dkt. 005 (Ariz. Sup. Ct. Dec. 17, 2025) (the Truth in Lending Act applies); *Commonwealth v. Hometap Equity Partners, LLC*, No. 2584-cv-00469-BLS2, 2025 WL 2468564 (Mass. Super. Aug. 21, 2025) (Massachusetts state laws apply); *In re Stone*, 671 B.R. 752 (Bankr. D. Colo. 2025) (Colorado state laws apply); see also *Roberts v. Unlock*, 1:24-cv-01374, Dkt. 106 (D.N.J. Dec. 10, 2025) (Unlock withdrawing arguments after judge indicated she would likely rule that products were residential mortgage loans under the Truth in Lending Act, case subsequently settled). In the past, CHEP has claimed that regulators and courts should ignore these court decisions because they were decided on pretrial motions. But there is no legal basis for ignoring a court decision just because it was made on a pretrial motion like a motion to dismiss, as many decisions are. Indeed, *Foster* itself was also decided in the posture of a “pretrial motion”—i.e., a motion to dismiss. Similarly, while some (but not all) of these decisions were unpublished, that is true for many court decisions—again, including *Foster*.

³⁷ *Foster v. EquityKey*, 2017 WL 1862527 (N.D. Cal. 2017); see also *Hometap*, 2025 WL 2468564, at *7 (explaining that “[t]he differences are clear” between the product in *Foster* and *Hometap*’s).

³⁸ See https://www.maine.gov/pfr/consumercredit/notice/notice_item.shtml?id=13322619.

- [Colorado Division of Real Estate Position Statement](#)³⁹.

The following states are considering similar action:

- Connecticut: [HB 5209](#) (follows [NCLC Model Law](#));
- Pennsylvania: [HB 2120](#) (Defines SAMs (HEIs) as residential mortgages);
- Massachusetts: [S.731/ H.1145](#) (follows NCLC model law) [*Industry bill*: [S.705/ H.1106](#)].

For example, the October 29, 2025 Advisory Ruling of the Superintendent of the Maine Bureau of Consumer Credit Protection finds that these products are consumer credit, are loans, and are mortgages subject to Maine Consumer Credit Code and Maine mortgage foreclosure laws, and are also subject to the rescission provisions of TILA's Regulation Z.⁴⁰ The Maine ruling also defines the end-of-loan payout amount as a finance charge.

In addition to the actions noted above, other developments have occurred in Minnesota, Colorado, and Massachusetts. An HEI lender paused new business origination activities in Minnesota after the Attorney General's office issued civil investigative demands regarding the company's activities in connection with mortgage and lending laws.⁴¹ In Colorado, months after issuing a subpoena, the Attorney General's office issued a cease and desist order to an HEI loan company directing the company to halt future origination activities in the state.⁴² The Massachusetts Attorney General is currently pursuing an enforcement action against an HEI loan company for violating that state's lending laws.⁴³ The Court denied the HEI loan company's motion to dismiss and allowed the striking of some of their affirmative defenses.⁴⁴

C. Existing regulations can be applied to HEI loans.

The Report without question or meaningful discussion adopts the HEI loan industry's assertion that these products "are fundamentally incompatible with many mortgage loan regulations."⁴⁵ But, in reality, most financial regulations are designed to be flexible enough to cover new products and prevent evasion by technicality, and, as discussed above, both courts and state regulators have found that existing regulations and laws can be applied to HEI loan products. Moreover, the Report's discussion⁴⁶ of loan characteristics that are incompatible with mortgage regulation are features that generally apply to certain other types of mortgages, such as reverse

³⁹ See

<https://dre.colorado.gov/sites/dre/files/documents/Position%20Statement%20Home%20Equity%20Contracts%20%28adopted%202026-01-21%29.pdf>.

⁴⁰ See https://www.maine.gov/pfr/consumercredit/notice/notice_item.shtml?id=13322619.

⁴¹ Morningstar DBRS, Presale Report: Unlock HEA Trust 2025-2 (Nov. 5, 2025), <https://dbrs.morningstar.com/research/466659/unlock-hea-trust-2025-2-presale-report>.

⁴² *Id.*

⁴³ Complaint, Doc. No. 1, Commonwealth v. Hometap Equity Partners, LLC, 2584CV00486 (Mass. Super. Ct. Feb. 19, 2025).

⁴⁴ Memorandum of Decision and Order on Defendants' Motion to Dismiss, Doc. No. 20, Commonwealth v. Hometap Equity Partners, LLC, No. 2584CV00486 (Mass. Super. Ct. Aug. 21, 2025); Order on Plaintiff's Motion to Strike Affirmative Defenses, Commonwealth v. Hometap Equity Partners, Doc. No. 36, LLC, No. 2584CV00486 (Mass. Super. Ct. Dec. 23, 2025).

⁴⁵ *The Report* at 32, *supra* note 4.

⁴⁶ *The Report* at 28, *supra* note 4.

mortgages and silent second liens. To take just one example, under TILA, reverse mortgages may include mortgages with balloon payments in “equity” or “shared appreciation.”⁴⁷

The CFPB’s mortgage regulations for Property Assessed Clean Energy (PACE) loans are a good example of how regulators can adjust existing mortgage rules to apply to new products.⁴⁸ The regulations on disclosure account for the lack of escrow payments on PACE loans and the effect on the existing mortgage escrow by the PACE product. But the federal disclosure rules do not change the timing of the disclosures, including the early disclosures, a core part of the statutory scheme. While the CFPB exempted PACE loans from periodic statement rules, HEI loan companies often issue regular statements and the statute’s periodic statement rules could be adjusted to account for the type of disclosures appropriate to this product, such as that the borrower must keep up with taxes, insurance and other property-related charges. Any need for adjustment is far from a fundamental incompatibility.

In addition, effective interest rates and an APR can be calculated for these products regardless of the terminology used by the companies. For example, TILA already requires disclosure of a balloon payment, which could then be used to calculate the APR.⁴⁹ State usury caps focus on the actual amount charged to the borrower rather than what the amount is called in the contract. Under Truth in Lending, and many state laws, the regulation focuses on “finance charges,” which include interest but also any other cost of credit—the difference between the money provided by an HEI lender at origination and what the borrower must pay at maturity. The essence of the finance charge is that it is all costs of credit, no matter how they are labelled.

Conclusion

Thank you for your consideration of these important issues. We request that you retract the Report’s assertions regarding the legal status of HEI loans and their suitability for credit regulation and insert, at minimum, an acknowledgement of the limitations of the data and the resulting lack of examination of the downstream impacts of HEI loans on homeowners. We are of course available to discuss these issues further with you and your colleagues.

Sincerely,

Alys Cohen
Director of Federal Housing Advocacy

cc:

Mary K. Cunningham, Senior Vice President for Research Management and Programs Janneke Ratcliffe, Vice President for the Housing and Communities Division

⁴⁷ 15 U.S.C. § 1602(cc).

⁴⁸ Final Rule, Property Assessed Clean Energy Financing (Regulation Z), Consumer Financial Protection Bureau, (90 Fed. Reg. 2434, Jan. 10, 2025), *available at* <https://www.federalregister.gov/documents/2025/01/10/2024-30628/residential-property-assessed-clean-energy-financing-regulation-z>.

⁴⁹ 12 C.F.R. § 1026.37(b)(7)(ii); 1026.37(c)(1)(i)(B); (1)(ii)(A).