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April 13, 2026

The Honorable Janet Mills
1 State House Station
Augusta, Maine 04333

Re: LD 1901—An Act to Regulate Shared Appreciation Agreements Relating to Residential Real Estate

Dear Governor Mills:

I am writing on behalf of the National Consumer Law Center regarding LD 1901which has now been enacted by the Maine House and Senate. We urge you to sign this legislation as it is of critical importance in protecting Maine homeowners from the dangers they would face in entering into shared appreciation mortgage ("SAM") agreements. I know from our work together in 2013 and 2014 on the Foreclosure Working Group and your work since then to protect Maine homeowners that this would be of particular importance to you.

The common features of these SAM loans are that:

- The SAM loan offers the homeowner an upfront payment of a substantial sum of cash;
- The homeowner signs an agreement which says the homeowner will not have to make any monthly payments over the term of the agreement (usually 10 or 30 years);
- The SAM loan is secured by a mortgage on the home of the homeowner who enters into the SAM agreement;
- At the end of the contract, or when the homeowner wants to sell or refinance the house, the homeowner pays a much larger sum to the SAM lender based upon the increase in value of the home over the term of the contract. In the one-page example attached to this letter, drawn from a Colorado case now in litigation, that homeowner, trying to repay

after only 5 years after origination, had to repay over 250% of the cash advance made to her;

- The SAM loan documents are hugely complex and long (97 pages in one case), filled with legal jargon, and unreadable by non-lawyers; and

- No upfront disclosures are made to homeowners of the true costs of these SAM loans and indeed, the actual payoff amounts cannot even be known until the time of repayment.

The significant harms of these SAM loans 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 II, while the product may appear 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.

Industry data shows that approximately one quarter of SAM homeowners are unable to obtain a traditional mortgage loan. (Indeed, one of the major SAM lenders publicly advertised on its website that it works with homeowners with credit scores as low as 500.) That fact raises an urgent question: what happens to these homeowners when repayment is triggered, and refinancing remains out of reach? In most cases the answer will be a foreclosure by the SAM lender or a forced sale of the home. The Consumer Finance Protection Bureau issued a major report[1] on the features and hazards of these products last year ("the CFPB Report").

I. LD 1901 as enacted by the House and Senate will protect Maine homeowners against some of the serious risks posed by SAM loans.

LD 1901 will provide critical protections to Maine homeowners who may be offered SAM loans. The following are some of the key homeowner protective provisions of LD 1901:

- The SAM loan industry asserts that these deals are investments, not loans or mortgages, and therefore are not subject to existing consumer protection statutes and regulations even though a clear consensus has emerged among recent court decisions and amongst regulators that the current generation of SAM loan products are subject to existing federal and state mortgage lending laws. LD 1901 will clarify that SAM loans are credit transactions which are subject to the Maine Consumer Credit Code (Title 9-A, M.R.S.§§ 1-101 through 16-111). Thus, LD 1901 will provide that SAM loans are subject to three-day recission rights, and the consumer finance charge limitations included in the MCCC. This provision of LD 1901 will also clarify that these loans subject to Maine's statutes regarding real estate foreclosure procedures and protections (Title 14, Chapiter 713).

[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/.

- LD 1901 will mandate pre-closing disclosures to homeowners of the actual costs of these transactions.

- LD 1901 will provide that SAM lenders will be subject to licensing requirements applicable to supervised lenders and regulation by the Maine Bureau of Consumer Credit Protection.

- Because the costs of SAM loans are high, LD 1901 will make these loans subject to Maine's high-cost mortgage loan provisions and protections at Section 8-506 of the MCCC.

- LD 1901 will prohibit the inclusion of the mandatory arbitration clauses and homeowner waivers of consumer rights, including waivers of jury trial and class action rights, which are a common feature of most SAM loan agreements and prohibited under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). for mortgages.

- Because of the great dangers these products create for homeowners, and because the transaction documents are so voluminous and tend to be incomprehensible to homeowners, LD 1901 provides that SAM contracts entered into by homeowners without the advice of independent counsel will be presumed to be unconscionable or the result of unfair or deceptive trade practices and will be subject to court ordered recission.

II. There will be severe downstream harms created by SAM loans in the absence of protective legislation.

A. SAM loans include large balloon payments and other costs, create significant risk of home loss, and place limits on future housing options.

The SAM loans 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.

1. Large balloon payments are owed at the end of the SAM loan.

The risks of mortgage loans with large balloon payments are well documented and have resulted in extensive regulation of balloon payments under the Truth in Lending Act and the Dodd-Frank Act. Expanding use of SAM loans, which rely on balloons, risks triggering a wave of foreclosures or forced sales[2] when loan obligations come due and require full repayment at the end of their terms. The equity-extraction enabled by SAM loans often primarily benefits the

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

investor and originator, frequently at the expense of the homeowner's long-term housing stability.

Balloon payments on unregulated SAM 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 a SAM 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]

Some examples of the balloon-related problems created by SAM 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 the home's future value (capped at 18% compound growth) within 10 years or less.[4] 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.[5] 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.[6]
- Charles Boyd and Janine Olson, two Washington seniors caring for an adult son with a disability, were similarly trapped in an SAM 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).[7] Five years later, their payment obligation had risen to

[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] *Roberts v. Unlock*, 1:24-cv-01374, Dkt. 79 at 7-8 (D.N.J. March 20, 2025).
[5] *Roberts*, Dkt. 93 at 4-6 (D.N.J. June 26, 2025).
[6] *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").
[7] Olson v. Unison Agreement Corp., No. 23-2835, 2025 WL 2254522, at *1 (9th Cir. Aug. 7, 2025).

> $229,143.[8] 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.[9] 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.[10]

These examples underscore the risks of SAM loans: 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.[11]

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 SAM 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 SAM loan final settlement 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.[12]

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[8] *Olson*, Dkt. 12.1 at 33.
[9] *Olson*, 2025 WL 2254522, at *2.
[10] *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).
[11] While homeowners face these risks, the Washington Report found that SAM 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.
[12] 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.

Other homeowners in the litigation described the same situation.[13] These significant harms, which SAM loans can and have caused for borrowers, must be factored into any evaluation of the safety and utility of the product.

Significant numbers of SAM homeowners have less-than-prime credit scores and were ineligible for a mortgage when they first obtained their SAM 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 SAM 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 Report[14] and in the Washington Report.[15]

3. Severe limits on subsequent housing options

SAM homeowners will also face significant constraints on their future housing choices because the SAM balloon payment strips away a significant portion of their equity at payoff. Compounding this harm, SAM 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. SAM loans also interfere with other rights of homeownership.

Unregulated SAM loans also are likely to interfer with first mortgage loss mitigation efforts of homeowners, limit homeowners access to the judicial system remedies, impair the inability for homeowners' heirs to assume the loan and stay in the home, and place limitations on use of the home. In addition to the complexity of SAM contracts, they often result from misleading advertising, and are often used to finance unsecured debt into home-secured debt.

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[13] *Id.* at Exs. C, F.
[14] *CFPB Report* at 3, 17, 20, *supra* note 1.
[15] *Washington Report* at 36-37, 43, *supra* note 3.

1. Inability to obtain payment relief when facing hardship

SAM loan agreements impair the ability of homeowners to obtain relief when struggling with an existing first mortgage. If a homeowner with an SAM 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 SAM mortgage or will require that the SAM lender subordinate its interest in the home. SAM loan contracts, however, do not obligate the company to agree to subordination; it is entirely at the SAM lender's discretion, and homeowners report that SAM lenders have refused requests for a subordination. This is a home-threatening risk for already credit-impaired homeowners who enter into SAM loan contracts. The refusal to subordinate also poses a problem for a homeowner who wants to refinance their first mortgage to a lower interest rate. They are dependent on the SAM lender's voluntary agreement to subordinate their mortgage, which is reportedly often withheld.

2. Lack of access to the judicial process

Most SAM 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 SAM loan industry argues their product is not a loan.

Arbitration tends to favor the repeat players–typically the companies–over individuals.[16] 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 SAM loan contracts are illegal and unenforceable, companies continue to attempt to enforce them against homeowners.[17] Notably, many SAM loan contracts also require homeowners to waive their rights to a jury trial.

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[16] *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.

[17] 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.

3. No options for heirs

In many SAM loan contracts, the death of the homeowner will trigger a "settlement event" requiring immediate full payment on the SAM 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,[18] 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 SAM loans.

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

SAM loan contracts place significant restrictions on homeowners use of their homes. These affect the borrower even before payoff. In addition to the usual obligation to maintain the property and to pay taxes and insurance, SAM loan contracts tend to impose other restrictions:

- 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).

[18] 12 U.S.C. § 1701j-3.

5. Complexity of SAM 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."[19]

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 SAM loan contracts are 80 or more pages long. As a result, homeowners may enter into SAM 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 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

SAM 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.[20]

SAM loan companies also often advertise their products as "partnerships" between the company and the homeowner.[21] However, the fine print in contracts by these same companies expressly states that the companies are not partners with homeowners. That is because partners

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[19] *CFPB Report* at 3, 20, *supra* note 1.
[20] *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).
[21] 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.

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.[22]

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

The SAM industry reports that homeowners often use SAM loans to pay off unsecured where SAM loan rates may be lower than the interest rate on credit card or personal loan debt. Use of SAM loans to convert 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 SAM 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, SAM loan contracts set 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.

III. The SAM loan industry makes false claims about laws and regulations applicable to SAM products.

The SAM industry asserts that its loan products are not loans and are not regulated under existing mortgage rules. That 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 SAM loan products *are* subject to existing federal and state mortgage lending laws.

A. HEIs are *loans* not "investments."

The SAM loan industry claims that SAM loans are not mortgage loans, repeatedly referring to them as "shared equity products" and contrasting them with "mortgage loan-based equity extraction options." 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 SAM loans are actually loans. This is important because whether SAM products 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.

[22] *See, e.g.*, 59A Am. Jur. 2d Partnership § 270.

The industry's argument that SAM 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 SAM loans are no different than a traditional mortgage, such as a single-payment reverse mortgage.

B. SAM loans should be subject to state and federal lending laws.

The SAM loan industry asserts that SAM loans are not subject to the Truth in Lending Act or the Real Estate Settlement Procedures Act, and that SAM loans are not considered credit under the Truth in Lending Act.

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 SAM loans are residential mortgage loans or where courts have held that these products are mortgage loans 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.[23] Further, SAM 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.[24]

[23] *See* 12 U.S.C. § 2602(1) (using the word "loan" without providing a definition); 12 C.F.R. § 1026.2(b)(3).
[24] While one letter from the Pennsylvania bank regulator to a SAM 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.

In litigation, courts have generally found that the current generation of SAM loans do, in fact, create a debt and are loans subject to both state and federal lending laws.[25] 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.[26] 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.

Many state legislatures and regulators have already made clear that SAM 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)[27];
- Maryland: Md. Code Ann., Fin. Inst. § 11-501(m)(2), (r);
- Colorado Division of Real Estate Position Statement[28].

The following states are considering similar action:

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

In addition to the actions noted above, other developments have occurred in Minnesota, Colorado, and Massachusetts. A SAM 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.[29] In Colorado, months after

[25] *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.*

[26] 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).

[27] *See* https://www.maine.gov/pfr/consumercredit/notice/notice_item.shtml?id=13322619.

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

[29] 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.

issuing a subpoena, the Attorney General's office issued a cease and desist order to a SAM loan company directing the company to halt future origination activities in the state.[30] The Massachusetts Attorney General is currently pursuing an enforcement action against a SAM loan company for violating that state's lending laws.[31] The Court denied the SAM loan company's motion to dismiss and allowed the striking of some of their affirmative defenses.[32]

C. Existing regulations can be applied to SAM loans.

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 SAM loan products. To take just one example, under TILA, reverse mortgages may include mortgages with balloon payments in "equity" or "shared appreciation."[33]

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.[34] 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, SAM 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.[35] 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

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[30] *Id*.

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

[32] 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).

[33] 15 U.S.C. § 1602(cc).

[34] 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.

[35] 12 C.F.R. § 1026.37(b)(7)(ii); 1026.37(c)(1)(i)(B); (1)(ii)(A).

money provided by a SAM 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

Even with the regulatory consequences of LD 1901 in effect, SAM loans will remain high risk products for homeowners entering into them due to (1) the final settlement payment amounts being unknowable until the end of the contract, (2) to the high effective interest rates on these products, and (3) the high probability that the funds needed to finally payoff the SAM loan will require sale of the home or else result in a foreclosure. LD 1901 will mitigate some of the risks of these loan by ensuring proper consumer disclosures, regulation of the SAM lenders by the Maine BCCP, and prohibitions on existing anti-consumer provisions. We urge you to sign LD 1901.

Thank you for your consideration of these matters.

Sincerely,

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