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November 25, 2025

To: Washington State Department of Financial Institutions  
Attn: Rules Coordinator, Division of Consumer Services

Dear Rules Coordinator:

Thank you for the opportunity to comment on your proposed rule for Home Equity Sharing Agreements (HESAs). Overall, we strongly support the proposed rules. But we have some recommendations for improvements and clarifications. For simplicity, this letter discusses the rules in order.

## **1. Proposed WAC 208-620-1000**

### **1.1 Redefine “final value” in subsection (1) to credit borrowers for improvements they pay for during the loan term and to reconcile it with WAC 208-620-1030.**

#### **1.1.1 Borrowers should get credit for improvements they make at their own expense.**

The lender’s payment would be unfairly inflated if it was calculated based on borrower-funded improvements. Accordingly, we recommend modifying the proposed definition by adding the phrase “and after deducting the estimated fair market value of any improvements paid for by the borrower during the loan term” to the end of the definition.

#### **1.1.2 Cross referencing WAC 208-620-1030 will improve clarity.**

Proposed WAC 208-620-1000(1) defines “final value” as “the value of the property upon reaching the maturity date or at the termination of the home equity sharing agreement as calculated using the estimated fair market value of the property or in the event of a sale, the sale price of the property.” But WAC 208-620-1030 is much more detailed. We recommend amending subsection WAC

208-620-1000(1) to say the final value is “calculated as provided in WAC 208-620-1030.” This will reduce the risk of confusion.

**1.2 Clarify the definition of “home equity sharing agreement” in subsection (2) to prevent regulatory evasion.**

The definition of “home equity sharing agreement” includes multiple components that require clarification to ensure the industry is fully covered and held accountable.

**1.2.1 The proposed definition of a HESA includes language that may unintentionally allow industry to argue around the rule’s coverage.**

We recommend deleting the phrase “a residential mortgage loan under RCW 31.04.015(24)” from WAC 208-620-1000(2). Paragraph 2 of the proposed rule defines “Home equity sharing agreement” in part as “a residential mortgage loan under RCW 31.04.015(24) . . . .” That definition, in turn, includes “any loan..” We assume that this is intended to declare that HESAs are loans (despite industry assertions to the contrary) and will be regulated as loans. While we strongly support this decision, we are concerned that, based on ongoing industry arguments, the above-quoted phrase could be misused to argue that the definition requires an obligation to first qualify as a “residential mortgage loan” before it can meet the definition of HESA and be subject to the proposed rule.

Because most HESAs today include contractual language asserting that the agreement is *not* a loan and is, instead, for the purchase of an “option,” they may argue that this regulation does not apply to them. We believe that this potential complexity could be avoided with a simple restructuring as outlined below.

**1.2.2 Additional clarification is needed for subparagraphs (2)(a)–(c), which describe payment at maturity in a way that may not reflect how most HESAs operate in practice.**

We recommend adding, “or any other triggering event specified in the agreement” to the definition of “final value” and after each instance of the phrase “upon reaching the maturity date of the agreement” in WAC 208-620-1000(2)(a)-(c). Proposed subparagraphs (a)-(c) define HESA as requiring the payment of a sum upon the maturity date of the agreement. But, most HESAs purportedly do not require payment upon maturity. Instead, they purport that payment only comes due when the company exercises its underlying “option” or elects to “convert” its contract into a share of equity in the home. This could occur at the end of the loan term or when there is a breach, the home is sold, the homeowner dies, or a first loan is refinanced.

**1.2.3 Greater clarity is needed to ensure the definition accurately captures the full range of payout structures found in HESAs.**

We recommend adding another subparagraph that covers another HESA structure that takes a percentage of the final value of the borrower’s residential real estate upon a triggering event. Subparagraphs (a)-(c) attempt to capture the different payout structures of home equity sharing agreements. Many agreements take a percentage of the increase in the home’s market value, or total appreciation in value, over the life of the agreement. This would be covered under (b). Another structure requires a percentage of the final equity amount to be paid at the end of the agreement. This is covered under (a). Yet another structure takes a percentage of the total home value at the end of the agreement, not just the appreciation or equity in the property. This may be covered under (c) but could be clarified by adding another subpart that includes a percentage of the final value of the property.

**1.3 Add a new paragraph to expressly declare HESAs to be residential mortgage loans.**

Finally, in conjunction with the change recommended in section 1.2.1 of this letter, above, we recommend adding that HESAs, as defined in the proposed rule, are residential mortgage loans under RCW 31.04.015(24) and 15 U.S.C. § 1602(dd)(5). To do so, there should be a separate, explicit statement declaring that “home equity sharing agreements” are residential mortgage loans. This standalone clarification would foreclose any attempt by industry to argue that HESAs fall outside the scope of the residential mortgage loan definition, regardless of how they are labeled or structured.

By affirmatively stating that all agreements meeting the Section 2 criteria are deemed residential mortgage loans, the rule would ensure comprehensive coverage, simplify enforcement, and prevent ongoing disputes about whether HESAs are loans or merely “options,” “investments,” or other alternative products. The TILA provision is included to ensure the TILA requirements, including those in WAC 208-620-1070(2), are imposed on home equity sharing agreement lenders.

**1.3.1 Clarify “equity” and payment terms.**

To ensure the definition accurately reflects how HESAs function and to prevent potential loopholes, we recommend two targeted revisions.

**1.3.1.1 Delete “future” from the phrase “future equity” in subparagraph (2)(a).**

We recommend deleting “future” from the phrase “future equity” in subparagraph (2)(a), because HESA contracts may take a portion of any equity existing at maturity—not just new equity arising after origination. Many HESAs

claim a share of any equity available at maturity—not solely equity accrued after origination.

**1.3.1.2 Change “repay” to “pay” in subparagraph (2)(c).**

We recommend changing “repay” to “pay” in subparagraph (2)(c) to avoid potential complexity and evasion. The HESA industry states in their contracts that the homeowner is not required to *repay* the initial advance (even when this is effectively required). Replacing the term “repay” with “pay” would promote clarity, consistency, and effective enforcement.

**1.4 Revise the definition of “initial payment amount” in subsection (3) to remove hidden profit.**

The term “initial payment amount” is defined as “any sum advanced by the lender to the borrower or to any third-party on behalf of the borrower pursuant to a home equity sharing agreement *including payment of any fees, costs, or expenses charged to the borrower.*” The italicized clause should be changed to exclude closing costs. Assessing borrowers for transaction closing costs effectively gives the lender additional insulation for their profit. This can result in several thousands of dollars in transaction fees being charged to the borrower. We recommend replacing the italicized phrase with “excluding payment of any fees, costs, or expenses imposed in connection with the execution of the agreement.”

**1.5 Redlined Summary of Recommended Changes to WAC 208-620-1000**

With additions in red, and in connection with the above recommendations, we recommend revising WAC 208-620-1000 as follows:<sup>1</sup>

1. “Final value” means the value of the property upon reaching the maturity date **of the agreement, or any other triggering event specified in the agreement**~~or at the termination of the home equity sharing agreement~~, as calculated **as provided in WAC 208-620-1030**~~using the estimated fair market value of the property or in the event of a sale, the sale price of the property~~, **and after deducting the estimated fair market value of any improvements paid for by the borrower during the loan term.**
2. “Home equity sharing agreement” is defined as ~~a residential mortgage loan under RCW 31.04.015(24) and~~ means any obligation in which an

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<sup>1</sup> This summary includes the changes discussed in the text and a few other non-substantive edits.

initial payment amount, sum of money, or other thing of value is extended to a borrower in exchange for:

- a. A percentage of the ~~future~~ equity of the borrower's residential real estate, which becomes due upon reaching the maturity date of the agreement **or any other triggering event specified in the agreement,**
- b. A percentage of the total appreciation of the **value of the** borrower's residential real estate which becomes due upon reaching the maturity date of the agreement **or any other triggering event specified in the agreement;** ~~or~~
- c. **A percentage of the final value of the borrower's residential real estate which becomes due upon reaching the maturity date of the agreement or any other triggering event specified in the agreement; or**
- d. A future obligation to ~~repay~~ a sum which becomes due upon reaching the maturity date of the agreement **or any other triggering event specified in the agreement.**

**A "Home equity sharing agreement" as defined in this section is a residential mortgage loan under RCW 31.04.015(24) and 15 U.S.C. § 1602(dd)(5).**

3. "Initial payment amount" means any sum advanced by the lender to the borrower or to any third-party on behalf of the borrower pursuant to a home equity sharing agreement ~~including~~ **excluding** payment of any fees, costs, or expenses ~~charged to the borrower~~ **imposed in connection with the execution of the agreement.**

**2. WAC 208-620-1010: The maximum interest rate in WAC 208-620-1010 is far too high for a secured loan.**

Proposed section WAC 208-620-1010(1)(a) would permit an annual interest rate as high as 25%. It is unclear whether this is simple or compound interest. Regardless, this is extremely high for a secured loan. For comparison, the average rate for 30-year fixed rate mortgages has never been that high in the roughly 54 years of data held by the Federal Reserve.<sup>2</sup> And in that period, it peaked at roughly 18.5% only briefly in 1981. The median over that 54-year

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<sup>2</sup> Freddie Mac, 30-Year Fixed Rate Mortgage Average in the United States [MORTGAGE30US], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/MORTGAGE30US>, November 18, 2025

period was 7.29% and the average 7.7%. Another indication of how high the proposed cap is comes from comparing it to the APR trigger for making a loan subject to the federal Home Ownership Protection Act (HOEPA) for high cost mortgages. The HOEPA trigger for a 30-year, first mortgage is currently 12.73%,<sup>3</sup> a hair under half of the proposed rate cap.

Notably, HOEPA will not even apply to HESAs because the proposal regulates them as reverse mortgages in WAC 208-620-1005(2), so the proposed rule will allow lenders to make extremely high-rate mortgages without the enhanced protections offered by HOEPA. We urge DFI to lower the cap substantially. Instead of the 25% cap, we recommend adopting the following language:

1. The maximum amount the consumer may be required to pay pursuant to a HESA shall not exceed the lesser of 15 percent of—
  - a. the amount by which the final value, as defined in WAC 208-620-1000(1), exceeds the actual value of the property at the time the contract was executed; or
  - b. the starting value of the property.
2. The APR for a HESA shall be calculated according to the requirements of 12 C.F.R. Part 1026, Appendix J (i.e. TILA) based on the maximum payment described in paragraph 1, any fees paid to the lender, and the full term of the agreement.
3. The APR for a HESA, as of the date of the consumer’s application, shall not exceed the average prime offer rate for a comparable transaction, as defined by 15 U.S.C. 1639c(b)(2)(B) by—
  - a. 1.5 or more percentage points for loans secured by a first lien;
  - b. 2.5 or more percentage points for loans secured by a subordinate lien.

The APR cap in this recommendation is the trigger currently used in TILA for higher-priced mortgage loans. As such, it is a recognized and tested measurement that could easily be applied to HESAs.

### **3. WAC 208-620-1020: Ensure that the independent counseling is comprehensive.**

We agree that independent pre-closing counseling is important to ensure that homeowners understand these products before putting their homes at risk. To

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<sup>3</sup> As of November 19, 2025.

make the counseling more effective, we recommend adding some of the topics required by California’s counseling statute.<sup>4</sup>

- What happens to others in your home or family after the homeowner dies or moves out;
- Alternative financial options, including other options for borrowing against home equity and comparisons of those different methods; and
- Whether this product could impact eligibility for government assistance programs.

#### **4. Prohibit risk-adjusting the starting property value.**

Many HEI contracts apply what they call a “risk adjustment” to the initial property value. Simply put, they use a starting value that is lower than the true value. As a result, even if the property value remains the same at maturity, subtracting the initial value from the final value will give the appearance of a positive amount of “new” equity. Risk adjusting the initial property value is unfair and confusing to borrowers. The proposed rule authorizes risk-adjusting the initial property value. This appears in WAC 208-620-1000(6) and (7) and WAC 208-620-1030, as well as the disclosures. We recognize that WAC 208-620-1030(3) requires applying the same risk adjustment to the final value if the property value has increased or remained the same, but that needlessly adds to the complexity of HESAs. And it still leaves consumers exposed to an unfair calculation if their property depreciates.

For example, consider a homeowner who signed a HESA that gives the lender 50% of their equity when the house was worth \$200,000. Imagine that their insurance premiums have gone up significantly (as many homeowners are experiencing) and they must sell due to a job loss. If their home has gone down in value to \$190,000, they would owe nothing under the HESA. But if the lender is allowed to discount the initial value by the 10% maximum permitted by the proposed rule, the starting value would be \$180,000 and the borrower would still owe \$5,000 of a phantom \$10,000 appreciation.

This is unfair because HESA lenders market their product as sharing in the risk and only taking a share of the appreciation in value. Consider these examples:

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<sup>4</sup> See Cal. Civ. Code § 1923.5. <https://codes.findlaw.com/ca/civil-code/civ-sect-1923-5/>

- Point advertises on their website, “An HEI is a partnership between you and Point, where you, the homeowner, get funds upfront from Point in return for a portion of your home’s future appreciation in value.”<sup>5</sup>
- Unison’s website says “We convert up to 15% of your home’s value to cash . . . . In return, we share in a portion of your home’s change in value when you decide to sell.”<sup>6</sup>

If the property declines in value, there is no appreciation to share; there is only a loss. But if the contract includes a risk adjustment, the lender could still get paid.

The industry takes great care in marketing these loans to house-rich, cash-poor individuals and many require a minimum of 25% equity in the home to qualify. This is purely asset-based lending in neighborhoods with steadily increasing home prices. There is minimal risk to the lender in exchange for a high return. The high effective rates and rates of return on HESAs already compensate lenders for their risk. They do not need a further advantage over the homeowner that mitigates their risk by undervaluing the home from the beginning. For these reasons, HESA lenders should be required to use the *actual* starting value of the property, with no risk adjustment.

## **5. Conclusion**

Thank you for the opportunity to comment on the proposed rules for Home Equity Sharing Agreements (HESAs). Overall, we strongly support the rules but recommend several clarifications and improvements to ensure fairness, transparency, and enforceability. Key suggestions include clarifying the definition of HESAs to prevent regulatory evasion, explicitly designating HESAs as residential mortgage loans, refining equity and payment terms, redefining “final value” to credit borrower-funded improvements, lowering the maximum interest rate to a more reasonable level, enhancing independent pre-closing counseling, and prohibiting risk adjustments to the starting property value. These changes will better protect consumers, reduce ambiguity, and ensure the rules reflect the actual practices of HESA agreements.

We remain available for any further discussion. Please reach out to us if you have any questions.

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<sup>5</sup> <https://point.com/> (accessed November 19, 2025).

<sup>6</sup> <https://www.unison.com/how-it-works> (accessed November 19, 2025).

Sincerely,

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