Presentation on Home Equity Sharing Agreements to the Washington State Senate Business, Financial Services & Trade Committee

December 4, 2025

COALITION FOR HOME EQUITY PARTNERSHIP

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Table of Contents

1. Background

2. What is a HESA?

3. How to Regulate HESAs

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Background

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- There is a new type of home finance product available to Washington homeowners seeking access to their home's equity. It's called a **Home Equity Sharing Agreement** or **HESA.**

- HESA originators want to be regulated, and this regulation should:
  - protect consumers,
  - exclude bad actors, and
  - be clear and compatible with the structure of HESAs.

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- At first glance, HESAs appear similar to mortgage loans, making sense to regulate it under existing mortgage laws.

- However, structurally HESAs are very different from traditional mortgage loans, making it impossible to fully comply. It's a classic "**square peg in a round hole**."

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- The Coalition for Home Equity Partnership (CHEP), the HESA industry group, is seeking regulations that are **similar in scope and spirit** to existing mortgage regulations, such as:
  - Required disclosures
  - Consumer education
  - Caps on costs & fees
  - Licensing, reporting, examination and enforcement authority with the Department of Financial Institutions (DFI).

- The DFI has begun drafting regulations for HESAs, and CHEP members have been engaged in providing feedback, sample disclosures and financial information to the Department.

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What is a HESA?

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- A HESA is a fundamentally different approach to providing home equity. It is a form of equity financing, as opposed to a traditional mortgage, which is a form of debt financing.

- Although relatively new to residential real estate, equity financing is widely used in the rest of the economy.

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- Debt Financing
  - Capital in exchange for periodic principal and interest payments
  - Absolute promise to repay the principal amount
  - Primarily underwritten based on creditworthiness and ability to service debt payments.

- Equity Financing
  - Capital in exchange for an economic interest in an asset
  - No periodic payments, no promise to repay the investment amount
  - Investment return is deferred to a future settlement event
  - Primarily underwritten based on asset characteristics and future value.

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- How a HESA works:
  - The homeowner receives a lump sum of cash from the HESA originator, funded by an investor.
  - The investor receives an economic interest in the property (either a percentage of the home's final value or change in value). The homeowner remains the sole owner of the home. The HESA originator records a lien, but does not appear on title and has no right of occupancy.
  - The homeowner can use the funds for the full term of the HESA (typically 10 or 30 years) without any interest charges or monthly payments.
  - During the term, the homeowner can settle the contract at a time of their choosing, usually upon sale of the home or upon a refinance.

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- How a HESA works:
  - In exchange for the cash investment, at settlement the investor will receive a return. There are currently two basic product types in the market, so the return will be either:
    - The initial invested amount plus a percentage of the home's change in value (up or down)
    - A percentage of the home's entire value
  - Some "change in value" products apply a discount to the starting home value. Most products have a built-in cost cap.
  - The homeowner pays an origination fee and transaction expenses at closing. The homeowner pays transaction expenses when they exit from the agreement.
  - In general, if the home value increases, the settlement payment increases, and if the home value decreases, the settlement decreases.

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- How a HESA works:
  - Initial home values are established by an appraisal, identical to those used in traditional mortgage transactions.
  - Generally, if the home is sold, the ending home value is the sales price. Otherwise, the value is established by a third-party appraisal.

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- Homeowner Benefits:
  - Access to home equity without incurring interest charges or needing to make periodic payments. HESAs are also not reported as debt to credit agencies.
  - For most homeowners, home equity is their largest but least accessible source of wealth. HESAs allow easier access to meet important financial needs like paying down expensive debt, medical or college expenses, or funding a small business.
  - HESAs are generally available to more homeowners than HELOCs or other mortgage products, especially those with lower credit.

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	HESAs	Home Equity Loan or HELOC	Cash-Out Refi	Reverse Mortgage	Personal Loan
Minimum Credit Score	550-500	620	620	None	580
No Income Qualification	✓ (for FICO >=550)	X	X	✓	✓
No Monthly Payments	✓	X	X	✓	X
Keep Existing Mortgage	✓	✓	X	X	✓
No Age Restrictions	✓	✓	✓	X	✓
Significant Cash Available	✓	✓	✓	?	X
Current Cost (August 2024)	**7-20%** (Annualized Cost)	**10-17%** (Interest Rate)	**6-9%** (Interest Rate)	**7-10%** (Interest Rate)	**20-36%** (Interest Rate)

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Regulating HESAs

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- Key Differences Between HESAs and Mortgage Loans:
  - No interest rate or principal balance, no periodic payments
  - No promissory note, no promise to repay an absolute amount
  - Amount of future repayment unknown at origination and based on the home's future value
  - Shared risk and reward between homeowner and investor
  - Non-recourse, the investor cannot look to the homeowner to recover any deficiency
  - No reporting to credit agencies
  - Asset-based underwriting versus credit-based

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- Existing mortgage regulations were designed for loans, which assume product features absent in HESAs like an interest rate and set periodic payments.
- Regulating HESAs under these provisions can create unintended consequences, consumer confusion, and significant regulatory uncertainty.

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Financial Product Comparison

	Traditional Mortgage Loan	HELOC	Reverse Mortgage	Unlock HESA
Property Lien	Yes	Yes	Yes	Yes
Amortizing Loan Balance	Yes	No (only after revolving period)	No (negative amortization)	No (settlement value based on property value, settlement timing, cost cap)
Monthly P&I Payments	Yes	No (can be IO during revolving period)	No (but interest accrues)	No (no principal or interest)
Underwriting Based On Ability-To-Repay Standard	Yes	No	No	No
Total Payment Obligation Known At Origination	Yes	Partial (known after revolving period)	No	No
Promissory Note and Promise To Repay a Sum Certain	Yes	Yes	Yes (but promise to repay is capped at lesser of ending UPB or home value)	No
Recourse To Homeowner	Yes	Yes	No	No
Cost Of Funds Capped At A %	Yes (interest rate based)	Yes (interest rate based)	Yes (interest rate based)	Yes (but annualized cost based)
Regulatory Standards	Federal And State Standards Apply	HELOCs Are Exempt From: • TRID • HPML • ATR/QM There Are Similar State Exemptions (varies by state)	Same Or Similar Exemptions As HELOC Plus Exempt From HOEPA	

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- Examples of Regulatory Incompatibility
  - Basic Cost Disclosures
  - Ability to Repay (ATR) Rules
  - High-Cost Home Loan Rules
  - MCR Reporting

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- Basic Cost Disclosures:
  - Under TILA, mortgage loans disclose a singular interest rate & APR to consumers up front.
  - HESAs don’t charge interest and because the amount of repayment will depend upon the home’s future value, it is impossible to provide a single annualized cost value.
  - We suggest allowing disclosures be made in tables showing multiple specific scenarios for given home appreciation and term length.

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- Ability to Repay Rules:
  - Under TILA, mortgage lenders are required to analyze a homeowner's ability to make their monthly payment. This analysis assumes there is a periodic payment to be made, which HESAs do not have.
  - HESA underwriting is focused on ensuring there is enough equity in the home. In addition, typical HESA term lengths are 10 or 30 years, and it is not possible to predict a homeowner's ability to repay that far into the future.
  - Like HELOCs and reverse mortgages, HESAs should be exempted from traditional ATR rules.

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- High-Cost Home Loan Rules:
  - Under state and federal law, mortgages with interest rates above a certain threshold are considered “high-cost” and subject to additional regulation. As HESAs have no interest rate, there is no way to make this determination.
- MCR Reporting
  - Reporting in accordance with required fields, especially as it relates to payments and delinquencies, is impossible for the HESA product.

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- Classification as a Reverse Mortgage
  - Earlier this year, the 9th Circuit released an unpublished opinion in *Olson v. Unison*, which held that HESAs could be considered a reverse mortgage under Washington law. Although this decision was vacated upon settlement, it can still cause confusion to Washington homeowners.
  - Neither the HESA industry nor the DFI agree with this conclusion, and the DFI does not regulate HESAs as reverse mortgages.
  - However else the Legislature wishes to address HESAs, we ask you to clarify that HESAs are distinct from reverse mortgages and should not be regulated as such.