



COALITION FOR HOME EQUITY PARTNERSHIP

Via Email and Overnight Delivery:
Rochelle.henderson@dfi.wa.gov

Rochelle Henderson
P.O. Box 41200
Olympia, WA 98504-1200

Re: DFI - CR-101 - Preproposal Statement of Inquiry

Dear Ms. Henderson,

In its Preproposal Statement of Inquiry, we understand the objective of the Department of Financial Institutions (or “the DFI”) at this time is to gather in-put from interested parties in a decision of whether to adopt a new rule on home equity sharing agreements (or “HESAs”) prior to any publication of same.

This letter is submitted by Coalition for Home Equity Partnership (“CHEP”) to respectfully request that the DFI refrain from proposing regulations at this time pertaining to HESAs for two reasons. First, legislation is required to formally define what a HESA is and the rules that govern these products. Second, such legislation should be informed by the results of the legislatively mandated study of HESAs.

I. Legislation governing HESAs is necessary before rulemaking is initiated.

CHEP believes that that HESAs are not “loans” subject to the Consumer Loan Act; a position buttressed by the attempted legislative solutions proffered during the last two legislative sessions. That said, we recognize the DFI’s position that HESAs should be subject to the Consumer Loan Act as a form of residential mortgage loan. However, respectfully, that view is contrary to the industry’s understanding and interpretation of the Consumer Loan Act and, therefore, raises serious concerns as to whether the DFI possesses rulemaking authority with respect to HESAs in the first place.

Leaving aside the current applicability of the Consumer Loan Act to HESAs, only a legislative solution can provide all stakeholders with advance notice, a timeline for implementation, certainty, safeguards, and guidelines under which the industry can effectively operate. CHEP further believes that a legislative solution, such as that proposed in House Bill (HB) 1464 (2025), establishes a familiar regulatory regime under the auspices of the DFI comprised of supervisory oversight, licensing, disclosures, caps on costs and other consumer protections, but tailored to the distinct characteristics of a HESA.

CHEP certainly believes that the DFI possesses the subject matter expertise to promulgate HESA specific rules and should ultimately be the regulator that oversees HESAs. However, other provisions of Washington law are inextricably linked to the characterization of HESAs as a consumer loan and the DFI may currently lack the authority to issue rules relating to other provisions of Washington law.

CHEP members’ most significant concern with proposed DFI rulemaking is with the statement in the Preproposal Statement of Inquiry that HESA products meet the definition of “residential mortgage loan” as set forth in the Consumer Loan Act, chapter 31.04 RCW. Again, in our view, if that were true, the Legislature would not have needed to propose such detailed and specific HESA legislation, twice.

II. Any legislation or future rulemaking should be informed by the study mandated by the legislature.

Regarding the DFI's ongoing study of HESAs, CHEP's members applauded Substitute Senate Bill 5950 (2024) for its appropriation of funds to the DFI for that study. Our members fully cooperated with the DFI's request for information and were never once advised that their cooperation was anything other than satisfactory.

We recommend that the DFI wait for Phase Two of its study to be completed, gather feedback on it, and work with industry and other stakeholders to draft and pass legislation in scope and spirit substantially similar to HB 1464. We understand that the stakeholders may have been critical of the timing of HB 1464 because Phase Two of the HESA study had not been completed, and preferred that the Legislature wait until that study was completed before enacting legislation. By the same token, if legislation should wait until that study is completed and published, then any proposed rulemaking would also be premature and should also be held in abeyance for now.

Waiting for the publication of the Phase Two study also will provide stakeholders additional time to formulate a data-driven approach, grounded in deliberate consideration and stakeholder engagement, to the regulation of HESAs. As you know, CHEP members have offered and continue to be prepared to work with the DFI in crafting legislation within which we can comply. We feel strongly that we can provide the necessary product-specific expertise for such an effort.

We also understand that a pending court action is still open on the issue of whether a certain type of HESA is a "loan" under the Consumer Loan Act. To date, the district court has ruled it is not. If that ruling is overturned on appeal, we believe the matter would then be remanded for further consideration and a federal district court will have to undertake further proceedings on a state law issue, and that could take years, or the case could settle. If that ruling is not overturned on appeal, the district court's finding will stand.

The HESA industry in Washington has actively pursued legislative clarity in the regulation of its products. We do not agree with the DFI's view that HESAs are consumer loans, due to the potential triggering of unfavorable existing laws, and that such a classification fails to recognize the unique nature of HESAs. The industry believes that legislative action, potentially modeled after HB 1464 and informed by the results of the Phase Two Study, is the appropriate mechanism for establishing regulation, ensuring consumer protection, and providing certainty for all stakeholders. We have advocated for open communication and collaboration with the DFI before and during the ongoing study to bridge the existing divide in understanding and find a mutually acceptable regulatory framework, and we will continue to do so regardless of the path taken by the DFI.

For the above reasons, we respectfully request that the DFI consider our concerns and refrain from proposing rules regarding HESAs at this time until the Phase II study has been completed and considered by all stakeholders, and the Legislature. We are available to discuss this matter further at your convenience.

Thank you for your time and consideration.

Sincerely,

Coalition for Home Equity Partnership



Ed McFadden, President

Cc: Members of House Consumer Protection & Business Committee (via email)
Members of Senate Business and Financial Services Committee (via email)