

RESCINDED

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Replaced - See OCC 2026-39

Fair Lending: Interagency Statement on Special Purpose Credit Programs

Summary

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Consumer Financial Protection Board (CFPB), the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Justice, and the Federal Housing Finance Agency (collectively, the agencies) today published an interagency statement regarding special purpose credit programs (SPCP) under the Equal Credit Opportunity Act (ECOA), and its implementing regulation, Regulation B.

Note for Community Banks

This bulletin applies to all community banks.^{[1](#)}

To

Chief Executive Officers of All National Banks, Federal Savings Associations, and Federal Branches and Agencies; Department and Division Heads; All Examining Personnel; State Banking Officials and Other Interested Parties

Highlights

This bulletin

- conveys the interagency statement, which
 - reminds creditors, which include those that are banks, of the ability under the ECOA and Regulation B to establish SPCPs to meet the credit needs of specified classes of persons.
 - calls attention to the recent HUD guidance concluding that SPCPs instituted in conformity with ECOA and Regulation B generally do not violate the Fair Housing Act.^{[2](#)}
- provides additional information about SPCPs under ECOA and Regulation B.
- discusses the agency's role regarding SPCPs.

Additional Information About Special Purpose Credit Programs Under ECOA and Regulation B, and Recent HUD Guidance

ECOA and Regulation B

ECOA provides that “[i]t shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction” on a prohibited basis.^{[3](#)} Prohibited bases under ECOA are race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to contract), because all or part of the applicant’s income derives from

any public assistance program and because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

ECOA provides, however, that the prohibitions against discrimination are not violated when a for-profit creditor refuses to extend credit offered pursuant to an SPCP that meets the standards in Regulation B.⁴ For example, such programs may include initiatives for low-income minority borrowers, or small business lending programs providing credit to minority- or disabled-owned businesses.⁵

On December 21, 2020, the CFPB issued an Advisory Opinion on SPCPs to clarify the content that a for-profit organization must include in a written plan that establishes and administers an SPCP under Regulation B.⁶ In addition, the Advisory Opinion clarifies the type of research and data that may be appropriate to inform a for-profit organization's determination to establish an SPCP to benefit a specified class of persons and provides examples.⁷

Recent HUD Guidance

On December 6, 2021, HUD's Office of General Counsel issued a legal opinion on the Fair Housing Act's treatment of certain SPCPs that are designed and implemented in compliance with the ECOA and Regulation B.⁸ The legal opinion concludes that a for-profit institution's SPCP designed and implemented in compliance with ECOA and Regulation B generally does not violate the Fair Housing Act.

On December 7, 2021, the HUD Office of Fair Housing and Equal Opportunity (FHEO) issued a statement encouraging lenders to use SPCPs as a remedy for disparities in access to homeownership.⁹ Citing HUD's December 6, 2021, legal opinion, the FHEO statement encourages lenders to seriously consider establishing SPCPs that are consistent with the antidiscrimination and affirmative provisions of the ECOA, Regulation B, and the Fair Housing Act.¹⁰ The FHEO statement provides that "[s]uch programs, if constructed thoughtfully and in accordance with the CFPB's regulations and guidance, can be a significant step towards bridging the racial and ethnic homeownership and wealth gaps that exist throughout the United States."¹¹

The December 6, 2021, HUD General Counsel opinion and the December 7, 2021, FHEO statement provide helpful clarifications regarding the application of the Fair Housing Act's nondiscrimination provisions to SPCPs.

The OCC's Supervisory Role Regarding SPCPs

The OCC and other agencies that supervise for and enforce ECOA and Regulation B do not determine whether a program qualifies for SPCP status or whether a particular program benefits an "economically disadvantaged class of persons." Longstanding Official Staff Commentary to Regulation B provides that those determinations must be made by a creditor.¹²

The OCC has a long-standing practice of consulting with its regulated institutions that are considering introducing SPCPs. Although not required, such consultations may allow banks to benefit from the perspective of OCC experts familiar with other SPCPs. Additionally, such consultations benefit the OCC by giving the agency a broader perspective on the populations and the credit products or services that are the focus of the proposed SPCP.¹³

Further Information

Please contact Vonda Eanes, Director for Community Reinvestment Act and Fair Lending Policy, at (202) 649-5470.

Related Link

- [“Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B” \(PDF\)](#)

¹ “Banks” refers collectively to national banks, federal savings associations, covered savings associations, and federal branches and agencies of foreign banking organizations.

² Refer to HUD’s [“Office of General Counsel Guidance on the Fair Housing Act’s Treatment of Certain Special Purpose Credit Programs That Are Designed and Implemented in Compliance With the Equal Credit Opportunity Act and Regulation B.”](#)

³ Refer to 15 USC 1691(a).

⁴ Refer to 15 USC 1691(c)(3).

⁵ Refer to 12 CFR 1002.8, Supplement I, Comment 8(a)-5; Equal Credit Opportunity (Regulation B); Special Purpose Credit Programs, 86 Fed. Reg. 3762, 3765 (January 15, 2021).

⁶ Refer to 86 Fed. Reg. at 3762, 3764–65 (January 15, 2021); also refer to the CFPB’s [“Expanding Access to Credit to Underserved Communities”](#) (July 31, 2020), which calls attention to opportunities to develop SPCPs and use of affirmative advertising consistent with the ECOA and Regulation B requirements.

⁷ Refer to 86 Fed. Reg. at 3765–66.

⁸ Refer to HUD’s [“Office of General Counsel Guidance on the Fair Housing Act’s Treatment of Certain Special Purpose Credit Programs That Are Designed and Implemented in Compliance With the Equal Credit Opportunity Act and Regulation B.”](#)

⁹ Refer to [“FHFO’s Statement by HUD’s Office of Fair Housing and Equal Opportunity on Special Purpose Credit Programs as a Remedy for Disparities in Access to Homeownership.”](#)

¹⁰ Ibid.

¹¹ Ibid.

¹² Refer to CFPB, [“Comment for 1002.8 - Special Purpose Credit Programs.”](#)

¹³ For example, [OCC Advisory Letter 2003-8](#), “Financing Minority Businesses,” provides information on ways that banks can satisfy the financing needs of minority business entrepreneurs consistent with safe and sound banking practices, describes appropriate risk mitigation practices with respect to fair lending, references the availability of SPCPs, and states that the OCC encourages banks considering SPCPs to discuss their plans with their examiners.

Topic(s): ■ [CONSUMER PROTECTION](#) ■ [FAIR LENDING](#)