

# New Opportunities for Lenders and Borrowers under Special Purpose Programs

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Problems with lack of affordability and access to housing are longstanding in the U.S. The CFPB has indicated that “minority households... continue to lack fair and equitable access to credit,” including mortgage lending.<sup>[1]</sup> These unmet needs, along with historical and ongoing discrimination such as redlining, exacerbate the racial wealth gap and leave many communities of color overlooked and underserved. However, equity and racial justice are policy priorities of the Biden Administration.<sup>[2]</sup> Special Purpose Credit Programs (SPCPs) may fill the gaps in affordability and access to housing. Special-purpose credit programs provide unique standards to make loan qualification easier for underserved populations. While applicants must meet a clearly defined set of criteria to take advantage of these programs, the purpose of a SPCP is to provide access to credit for groups that might have a difficult time qualifying for credit because their communities were underserved in the past.

The Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, permit creditors to offer or participate in SPCPs to meet special needs through:

- Any credit assistance program authorized by federal or state law for the benefit of an economically disadvantaged class of persons;
- Any credit assistance program offered by a non-for-profit organization for the benefit of its members or an economically disadvantaged class of persons; or
- Any SPCP offered by a for-profit organization, or in which such an organization participates to meet special social needs, if:
  - the program is established and administered pursuant to a written plan that identifies the class of persons that the program is designed to benefit under the procedures and standards for extending credit under the program; and
  - the program is established and administered to extend credit to a class of persons who, under the organization’s customary standards of creditworthiness, probably would not receive such credit or would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.<sup>[3]</sup>

In January 2021, the CFPB issued an Advisory Opinion (AO) indicating the content required in a written plan used by a for-profit organization that establishes and administers a SPCP under the ECOA and Regulation B.<sup>[4]</sup> In addition, the AO clarifies the data that may be appropriate to inform for-profit organizations’ determination that an SPCP is needed to benefit a certain class of persons.

Nonetheless, some stakeholders expressed uncertainty as to the treatment of ECOA and Regulation B SPCPs under the Fair Housing Act (FHA). While SPCPs are specified under ECOA, they are not specified under the FHA. However, in December 2021 the Department of Housing and Urban Development issued guidance confirming SPCPs for real estate loans or credit assistance that are compliant with ECOA and Regulation B generally would not violate the FHA.<sup>[5]</sup>

In February 2022, the CFPB joined with seven other federal agencies and released a statement appealing to lenders to consider ways to heighten credit access through SPCPs in ways that could enhance lenders' serving historically disadvantaged communities.<sup>[6]</sup>

Homeownership is one of the primary ways in which American families build and pass on wealth to the next generation. Lenders have an interest in meeting the credit needs of underserved communities while meeting and furthering business objectives. SPCPs can be used to expand credit access for underserved borrowers who have been overlooked but can repay their debt. SPCPs are one way to address this gap and bring fair access to financial services to additional potential homeowners.

Government agencies and lenders are identifying new ways to advance equity by increasing homeownership opportunities for underserved populations. Numerous financial institutions have dedicated billions of dollars to increasing ways to meet the needs of underserved communities. Further, lenders are increasingly interested in taking more proactive means to develop lending opportunities for members of communities of color that have faced discrimination and historically been excluded from access to credit and housing. These endeavors can be a fundamental part of a financial institution's efforts to serve a broader community. However, lenders must be cognizant to undertake these activities in compliance with the obligations of ECOA, Regulation B, and the FHA.

Note that the applicable agencies do not determine whether a program qualifies for special purpose credit status. Accordingly, financial institutions must determine whether their programs qualify for special purpose credit status.

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1. Tim Lambert, "[Using special purpose credit programs to serve unmet credit needs](#)," Consumer Financial Protection Bureau blog, July 19, 2022.

2. [“Advancing Equity and Racial Justice Through the Federal Government,”](#) The White House (last accessed Apr. 5, 2023). The Biden Administration has recognized that the housing affordability crisis is disproportionately impacting low-income communities and communities of color. Second, the Biden Administration believes that lack of affordable housing is a barrier to opportunity. Third, the Biden Administration has proposed a number of policies to address the affordable housing crisis, many of which are framed as equity issues. In his 2023 budget, President Biden proposed a number of initiatives to address racial and economic disparities in housing, such as expanding access to homeownership for Black and Hispanic families and providing rental assistance to families with children, including: (i) increasing funding for the Low Income Housing Tax Credit (LIHTC), (ii) further reforming the Affirmatively Furthering Fair Housing (AFFH) rule, and (iii) providing new Project-Based Rental Assistance (PBRA) to extremely low-income (ELI) renter households. See [“FACT SHEET: President Biden’s Budget Lowers Housing Costs and Expands Access to Affordable Rent and Home Ownership,”](#) The White House, Mar. 9, 2023.
3. 12 C.F.R. § 1002.8.
4. Equal Credit Opportunity (Regulation B); Special Purpose Credit Programs, 86 Fed. Reg. 3762 (Jan. 15, 2021).
5. See [“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,”](#) U.S. Department of Housing and Urban Development General Counsel, Dec. 6, 2021.
6. See [“Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B,”](#) Feb. 22, 2022.

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