



MORTGAGE BANKERS ASSOCIATION



May 10, 2021

The Honorable Marcia Fudge
Secretary
Department of Housing and Urban Development
10th Floor
451 7th Street S.W.
Washington, DC 20410

Re: Special Purpose Credit Programs and the Fair Housing Act

Dear Secretary Fudge:

The National Fair Housing Alliance and Mortgage Bankers Association are committed to creating a housing finance system that provides fair and equitable access to credit. Our organizations and the members we represent understand that achieving this goal requires intentional efforts designed to reach members of underserved communities. We are writing in regards to a tool, the special purpose credit program (SPCP), which has the potential to strengthen these efforts.¹ More specifically, we are writing to ask that the Department of Housing and Urban Development (HUD), pursuant to its authority to administer and enforce the Fair Housing Act (FHA), address what key market participants might perceive as an uncertainty surrounding the FHA's treatment of SPCPs in order to facilitate broader use of these programs in the mortgage market.

The Equal Credit Opportunity Act (ECOA) and the FHA cover residential mortgage loan transactions. While each of these statutes broadly prohibits discrimination, ECOA and its implementing rule, Regulation B, make explicit that it is not illegal discrimination for creditors to offer "special purpose credit programs" (SPCPs). As Congress explained, SPCPs are intended as a mechanism "to increase access to the credit market by persons previously foreclosed from it."² Pursuant to these SPCP provisions, a for-profit institution may favorably consider otherwise prohibited characteristics, such as race or national origin, as part of a SPCP designed "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[.]"³

Unlike ECOA, the FHA does not include language explicitly authorizing SPCPs. While there may not be explicit textual authorization for SPCPs in the statute, there are strong legal arguments that SPCPs that are in compliance with ECOA and Regulation B also do not violate

¹ 12 C.F.R. § 1002.8.

² 5 S. Rept. 94-589, 94th Cong., 2nd Sess., at 7, reprinted in 1976 U.S.C.C.A.N. 403, 409.

³ 12 C.F.R. § 1002.8(a)(3)(ii).

the FHA.⁴ This conclusion is supported by traditional methods of statutory construction and it harmonizes ECOA with the FHA's purposes, including furthering integration and fair housing.

While we believe there is an existing basis to conclude that SPCPs are compliant with the FHA, HUD could ameliorate any uncertainty as to whether ECOA-compliant SPCPs — in particular, SPCPs that will benefit Black and Hispanic borrowers — comply with the FHA. Currently, the lack of clarity on this issue could have the effect of discouraging mortgage lenders from utilizing SPCPs to their full potential. Providing this clarity would also advance HUD's own obligations to affirmatively further fair housing.

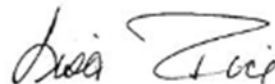
Given this administration's focus on ameliorating the yawning racial gap in homeownership, we urge HUD as the agency with rule writing jurisdiction for the FHA to lift any uncertainty regarding the treatment of SPCPs. Specifically, HUD should formally clarify that an ECOA-compliant SPCP designed to benefit Black and Hispanic applicants does not violate the FHA's antidiscrimination mandate. By providing such clarity, HUD can unlock the potential of SPCPs as a tool to alleviate current disparities in housing, a result that is consistent with HUD's duty to further the FHA's objectives of undoing historic patterns of segregation and other types of housing discrimination.

Please do not hesitate to contact us if we can be of any assistance regarding this matter.

Most Sincerely,



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⁴ See https://nationalfairhousing.org/wp-content/uploads/2020/11/NFHA_Relman_SPCP_Article.pdf.