



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

December 7, 2021

MEMORANDUM FOR: Office of Fair Housing and Equal Opportunity
Fair Housing Assistance Program Agencies
Fair Housing Initiative Program Grantees

FROM: Demetria L. McCain, Principal Deputy Assistant Secretary for Fair Housing & Equal Opportunity 

SUBJECT: FHEO'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

Homeownership is the primary way American families build wealth and pass it on to the next generation. But, while the United States is known worldwide as the land of great opportunity, opportunities for homeownership have been deeply unequal in our country. Because of systemic discrimination in this nation's housing and credit markets, including by the federal government itself, homeownership rates are much lower for African Americans and other people of color than for their White counterparts. This was true in the 1960s before the Fair Housing Act became law, and it is even truer today—the Black-White homeownership gap is wider today than it was in 1968 when the Fair Housing Act became law.¹

Every American deserves an equal opportunity to become a homeowner, accumulate wealth and pass it down to their children or other heirs. To accomplish this, the Department of Housing and Urban Development (HUD) and its Office of Fair Housing and Equal Opportunity (FHEO) are committed to working to eliminate the homeownership gap, which is one of the major inequities in the United States today. Among other things, HUD and FHEO will vigorously enforce the Fair Housing Act and other civil rights laws to combat discrimination in housing, home mortgage lending, and appraisals.

But bridging the racial and ethnic homeownership gap requires more than combatting current and future discrimination. Lenders and government alike must find creative ways to advance equity by increasing homeownership opportunities for underserved populations. It is not enough just to remove barriers to credit going forward. We must also work to remedy past injustices by targeting communities and populations that were and continue to be deeply harmed

¹ See *Reducing the Racial Homeownership Gap*, THE URBAN INSTITUTE, <https://www.urban.org/policy-centers/housing-finance-policy-center/projects/reducing-racial-homeownership-gap> (using data from the 2017 American Community Survey); Quarterly Residential Vacancies And Homeownership, First Quarter 2021, U.S. CENSUS BUREAU 1, 9 (2021), <https://www.census.gov/housing/hvs/files/currenthvspress.pdf>.

by discrimination. If we do not work proactively, longstanding inequities will continue to persist in communities throughout the United States.

Because narrowing the homeownership gap is an effective way to bridge the inequities that exist today, FHEO is encouraging lenders to take two important steps designed to remedy the continuing legacy of past discrimination. First, FHEO encourages lenders to review current and historic barriers to credit and homeownership faced by people of color and other underserved communities. Second, FHEO encourages lenders to help resolve these inequities through Special Purpose Credit Programs designed to assist those who have historically been locked out of homeownership opportunities, such as economically disadvantaged classes of persons and first-time homebuyers whose parents and grandparents may have been excluded from the housing and credit markets by discriminatory policies.

The Equal Credit Opportunity Act (ECOA) recognized Special Purpose Credit Programs as one mechanism that financial institutions can use to open the door to homeownership for underserved populations who have historically been denied that opportunity. A Special Purpose Credit Program is a special type of lending program that allows lenders and other groups to direct financial assistance to groups who have been historically locked out of homeownership. These programs can create a pathway to reducing both the racial and ethnic gap in homeownership and the related racial and ethnic wealth gap.²

When amending ECOA in 1976, Congress recognized that Special Purpose Credit Programs may be established to help remedy longstanding discrimination in credit markets and that such remedial programs do not themselves constitute unlawful discrimination. But very few of these Programs have been established to create home ownership opportunities for affected communities.³ When asked why they have not previously established Special Purpose Credit

² Jonathan Eggleston and Donald Hays, *Many U.S. Households Do Not Have Biggest Contributors to Wealth: Home Equity and Retirement Accounts*, U.S. CENSUS BUREAU (2019), https://www.census.gov/library/stories/2019/08/gaps-in-wealth-americans-by-household-type.html?utm_campaign=20190827msacos1ccstors&utm_medium=email&utm_source=govdeli very% (“Just two assets — home equity and retirement accounts — accounted for 62.9% of households’ net worth in 2015.”).

³ See S. Raman & Darren M. Welch, *Special Purpose Credit Programs — Taking a Second Look at a Familiar Tool*, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP AND AFFILIATES (July 29, 2020), <https://www.skadden.com/insights/publications/2020/07/special-purpose-credit-programs> (“Special purpose credit programs have explicitly been permitted for more than 40 years, though creditors have tended to use the programs sparingly.”); National Fair Housing Alliance Comment on CFPB’s Request for Information on the Equal Credit Opportunity Act and Regulation B (Dec. 1, 2020), <https://www.regulations.gov/comment/CFPB-2020-0026-0133> (“Since SPCPs have been underutilized...”); Amanda Christopher J. Willis & Lori J. Sommerfield, *CFPB Issues Advisory Opinion Addressing Regulatory Uncertainty Regarding Special Purpose Credit Programs*, BALLARD SPAHR LLP (Dec. 28, 2020), <https://www.consumerfinancemonitor.com/2020/12/28/cfpb-issues-advisory-opinion-addressing-regulatory-uncertainty-regarding-special-purpose-credit-programs/> (“Because SPCPs are

Programs, some lenders told HUD and other federal agencies that they are willing to establish such Programs to improve homeownership opportunities for racial and ethnic groups who have been underserved historically, but that they are worried that those Programs may run afoul of the Fair Housing Act and other federal anti-discrimination laws. The Consumer Financial Protection Bureau issued guidance at the end of last year, directed at for-profit institutions, that helped answer some questions about how to lawfully create a Special Purpose Credit Program.⁴ On December 6, 2021, [HUD is issued a legal opinion](#) that makes clear that some Special Purpose Credit Programs that are lawful under ECOA and other federal laws generally are not barred by the Fair Housing Act.

With those legal concerns addressed, FHEO encourages lenders to seriously consider establishing Special Purpose Credit Programs that are consistent with the antidiscrimination and affirmative provisions of the Equal Credit Opportunity Act, Regulation B, and the Fair Housing Act. Such 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.⁵

relatively uncommon..."); *See also* 12 C.F.R. § 1002.8 (2019); Advisory Opinion on Special Purpose Credit Programs, 86 Fed. Reg. 3762 (2021) ("The Bureau is issuing this AO to address this regulatory uncertainty in the hope that broader creation of special purpose credit programs by creditors will help expand access to credit among disadvantaged groups and will better address special social needs that exist today.").

⁴ Advisory Opinion on Special Credit Purpose Programs, Bureau of Consumer Financial Protection, (Dec. 21, 2020) https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_special-purpose-credit-program_2020-12.pdf.

⁵ *See generally* Patrice Alexander Ficklin & Charles Nier, III, *The Use of Special Purpose Credit Programs to Promote Racial and Economic Equity*, 1 RACIAL JUSTICE IN HOUSING FINANCE: A SERIES ON NEW DIRECTIONS 52-59 (2021), <https://prrac.org/pdf/racial-justice-in-housing-finance-series-2021.pdf> ("By providing access to credit on favorable terms and conditions, SPCPs represent one potentially powerful restorative tool in the struggle to redress credit discrimination and racial inequity."); Nikitra Bailey et. al., *First Generation: Criteria for a Targeted Down Payment Assistance Program*, 1 NATIONAL FAIR HOUSING ALLIANCE AND CENTER FOR RESPONSIBLE LENDING 1 (2021), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-nfha-first-generation-jun21.pdf> (proposing a targeted down payment assistance program to work towards closing the racial wealth and homeownership gap); Michael Stegman & Mike Loftin, *An Essential Role for Down Payment Assistance in Closing America's Racial Homeownership and Wealth Gaps*, 1 URBAN INSTITUTE, 2, 13 (2021), https://www.urban.org/sites/default/files/publication/104134/an-essential-role-for-down-payment-assistance-in-closing-americas-racial-homeownership-and-wealth-gaps_0.pdf (stating that "[m]aterially improving racial equity requires that more people of color have sufficient liquid resources to compete for a home" and that "if United States is ever going to make progress in closing the racial homeownership gap, we need to help those who have been left behind."); Angela Hanks et.al., *How America's Structural Racism Helped Create the Black-White Wealth*

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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 may be access here:

https://hud.gov/sites/dfiles/GC/documents/Special_Purpose_Credit_Program_OGC_guidance_12-6-2021.pdf

Gap, CENTER FOR AMERICAN PROGRESS (2018),
<https://www.americanprogress.org/issues/race/reports/2018/02/21/447051/systematic-inequality/>
("As the data in this report reflects, making policy changes to close the black-white wealth gap must be an intentional process").