

Banking and Finance Law Daily Wrap Up, TOP STORY—Special Purpose Credit Programs possible without violating FHA, says FRB spearheading multi-agency statement, (Feb. 23, 2022)

Banking and Finance Law Daily Wrap Up

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The agencies issued the joint statement to encourage creditors expressing interest in offering special purpose credit programs (SPCs), as long as the SPC conforms to the Equal Credit Opportunity Act, implementing Regulation B, and the applicable sound lending principles.

Eight federal agencies led by the Federal Reserve Board issued an [interagency statement](#) on Feb. 22, 2022, advising interested creditors that they can establish special purpose credit programs for specified classes of persons without violating the Fair Housing Act (FHA), so long as they satisfy the Equal Credit Opportunity Act (ECOA) and its implementing Regulation B (Reg B) ([CA 22-2](#); [FIL 08-2022](#); [OCC Bulletin 2022-3](#)). The agencies joining the Fed included: Federal Deposit Insurance Corporation (FDIC); the National Credit Union Administration (NCUA); the Office of the Comptroller of the Currency (OCC); the Consumer Financial Protection Bureau (CFPB); the Department of Housing and Urban Development (HUD); the Federal Housing Finance Agency (FHFA); and the Department of Justice (DOJ).

The interagency statement served to call express attention to recent HUD guidance that the ECOA and Reg B generally do not violate the FHA. Specifically, the ECOA and Reg B permit creditors to extend compliant SPC credit pursuant to any credit assistance program expressly authorized by federal or state law for the benefit of economically disadvantaged class of persons. Non-profits can also extend such credit “for the benefit of” their own members and for profits can also participate in extending SPC credit as long as it meets FRB standards under 15 U.S.C. § 1691(c)(1)-(3); 12 C.F.R. § 1002.8(a).

Previously, the agencies had generally been issuing their own discrete statements or guidance in *ad hoc* response to questions posed by consumer credit providers and other stakeholders. For example, during the prelude to this interagency announcement, HUD released guidance on Dec. 7, 2021, concluding that SPCs generally do not violate the FHA as long as they conform to ECOA and Reg B. HUD sought, at that time, to emphasize that creditors may extend SPC credit across all types of credit covered by ECOA and Reg B (see [Banking and Finance Law Daily](#), Dec. 8, 2021).

In a [blog post](#), the CFPB referred to its advisory opinion of Dec. 21, 2020, in which the agency clarified the content that a for-profit organization must include in a written plan to establish and administer an SPC under Reg B. The CFPB noted that, although ECOA and Reg B certainly prohibit discrimination on specified prohibited bases in any aspect of a credit transaction, for profit organizations do not engage in discrimination if they provide SPCs, designed to meet special social needs, which comply with ECOA and Reg B. The advisory opinion also clarified the type of research and data that a for-profit may when making a determination to establish an SPC to benefit a specified class of persons (see [Banking and Finance Law Daily](#), Jan. 4, 2021).

The FRB announcement cautioned that the agencies do not generally jointly determine whether a program qualifies for SPC status. Rather, creditors with questions about ECOA and Reg B SPC provisions need to consult their appropriate regulatory agencies. FRB has instructed the Reserve Banks and their officers and managers in charge of consumer affairs sections to distribute the interagency guidance to supervisory staff and the supervised institutions in their districts. The FRB encouraged questions via the Board’s public website.

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