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NAVIGATING SPECIAL PURPOSE CREDIT PROGRAMS

In this article, the authors discuss the framework for special purpose credit programs authorized by the Equal Credit Opportunity Act. They provide an overview of existing court decisions and regulatory guidance interpreting the requirements applicable to for-profit institutions for establishing ECOA-compliant special purpose credit programs. Next, they identify potential legal risks and best practices for institutions that seek to implement special purpose credit programs to help meet special social needs while minimizing those risks.

By Olivia Kelman, Andrea K. Mitchell, and Lanette Suárez Martin *

While Special Purpose Credit Programs ("SPCP") have been Congressionally authorized for decades, only recently have they emerged as a go-to strategy for expanding access to credit among historically underserved communities. The Equal Credit Opportunity Act ("ECOA") was passed in 1974, and when it was amended in 1976 Congress determined that it "is not a violation" of the statute's antidiscrimination provisions for profit-making institutions to administer SPCPs "to meet special social needs."[1] Despite this longstanding sanction of SPCPs, for many decades they were not widely utilized due to a number of perceived legal risks and operational challenges: Creditors grappled with regulatory uncertainty regarding the precise requirements for implementing SPCPs in compliance with Regulation B, ECOA's implementing regulation; mortgage industry participants questioned whether ECOA-compliant SPCPs might nevertheless run afoul of the Fair Housing Act ("FHA") given the FHA's overlapping prohibitions in the context of residential real estate-related transactions; and institutions that sought to establish SPCPs in the mortgage lending context confronted barriers in selling SPCP loans to investors on the secondary mortgage market.

[1] 15 U.S.C. § 1691(c).

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