June 30, 2021

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

Dear Secretary Fudge:

Earlier this year, the Bipartisan Policy Center established a Housing Advisory Council to identify and promote bipartisan housing policies that advance racial equity and opportunity. To that end, we are writing to encourage the U.S. Department of Housing and Urban Development to offer clear guidance affirming that Special Purpose Credit Programs (SPCPs) that are compliant with the Equal Credit Opportunity Act (ECOA) are also fully compliant with the Fair Housing Act (FHA), which HUD administers and enforces. It is our view that greater utilization of SPCPs would improve access to credit in historically underserved communities and help close dramatic racial gaps in homeownership rates. Unfortunately, a perceived lack of clarity regarding the legal status of SPCPs under the FHA has acted as a deterrent to their broader use over the past four decades.

SPCPs allow creditors to target underserved communities, expanding access to the credit market to economically-disadvantaged individuals who have been previously shut out. ECOA and its implementing rule, Regulation B, explicitly allow for-profit institutions to consider characteristics such as race, national origin, and gender as part of an 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.” Over the years, the lenders that have utilized SPCPs have benefited from the ability to more effectively design programs to meet the needs of disadvantaged groups, while tapping into opportunities for business growth.

As you know, residential lending transactions must abide by the requirements of both the ECOA and FHA. Although the FHA does not explicitly authorize SPCPs, we believe that ECOA-compliant SPCPs are also compliant with the FHA, including with the law’s antidiscrimination mandate. We are unaware of any legal or regulatory precedent to the contrary. ECOA, which has a similar antidiscrimination provision to that of the FHA, explicitly states that SPCPs are not a form of illegal discrimination. The FHA’s antidiscrimination mandate should therefore be interpreted to integrate specific provisions like ECOA’s authorization of SPCPs.

By issuing clear guidance on this subject, HUD can further help to mitigate lingering concerns among lenders and facilitate the broader use of SPCPs, which can be an important tool to help reduce racial disparities in housing and family wealth. It is our hope that HUD will make providing such guidance a top priority of the department.

Thank you for your consideration of this request.

Sincerely,
BPC’s Housing Advisory Council
* Please note: Consistent with post-government employment restrictions, these council members withdrew from consideration of this policy matter and do not endorse this letter or its recommendations.

Co-Chairs:
- Henry Cisneros – Board Member, BPC; Former HUD Secretary
- Kevin Faulconer – Former Mayor of San Diego
- Michael Nutter – Former Mayor of Philadelphia
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- Gerald Hunter – President and Executive Director, Idaho Housing and Finance Association
- Maren Kasper – Managing Director, Bayview Asset Management; Former Acting President, Executive Vice President and Chief Operations Officer, Ginnie Mae; Former HUD Senior Advisor
- Jim King – CEO and President, Fahe
- Chrystal Kornegay – Executive Director, MassHousing
- Shawn Krause – Executive Vice President, Quicken Loans
- R. Hunter Kurtz* – Vice Chairman and Founding Partner, Gate House Strategies; Former HUD Assistant Secretary for Public and Indian Housing
- Lisa Rice – President and Chief Executive Officer, National Fair Housing Alliance
- Avik Roy – Senior Advisor, BPC; President, Foundation for Research on Equal Opportunity
- Dana Wade* – Chief Production Officer, Walker & Dunlop; Former HUD Assistant Secretary for Housing/Federal Housing Commissioner
- Karen Freeman-Wilson – President and CEO, Chicago Urban League; Former Mayor of Gary, Indiana