



Thursday, December 9, 2021

Super-Special

Summary

On Tuesday, [HUD](#) and the [CFPB](#) opened the door to [special-purpose mortgage finance](#). Now, we expect FHFA to use this safe harbor to mandate express GSE equitable-finance programs and for banks to take much of what's left in all their commitments after George Floyd's murder and turn it into mortgage and other community-finance products.

Impact

HUD's legal opinion was immediately backed by a statement from CFPB Director Chopra further clarifying how special-purpose credit (SPC) programs fit into both the Fair Housing and Equal Credit Opportunity Acts. Neither statement blows away any legal barriers to SPCs, but they combine to give the green light to many equitable-finance initiatives on hold due to fears of reverse-discrimination allegations. HUD's opinion is based on its read of the Fair Housing Act as not only barring discrimination against protected persons, but also creating an affirmative federal duty to redress it. HUD also reads ECOA as expressly allowing SPCs as long as various conditions are met.

Outlook

Although Chopra's statement accompanying the HUD guidance doesn't have the force of rule, it's a clear signal that well-designed SPCs won't draw CFPB fire and that's sure to be good enough for most of those seeking to open an SPC's doors. Indeed, following these announcements, an array of fair-housing groups not only supported it, but also demanded fast action from banks and other entities to establish SPCs for minority borrowers. These may come first via Fannie and Freddie in the form of [targeted downward ARMs](#), preferential terms for multi-family rehab in majority minority communities via GSE multifamily programs, and new servicing constructs. However, banks are also sure to develop SPCs to enhance their CRA creds and to offer higher-risk or lower-profit products in small enough amounts as not to rock the business model.