PRRAC
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Racial Justice in Housing Finance:
A Series on New Directions

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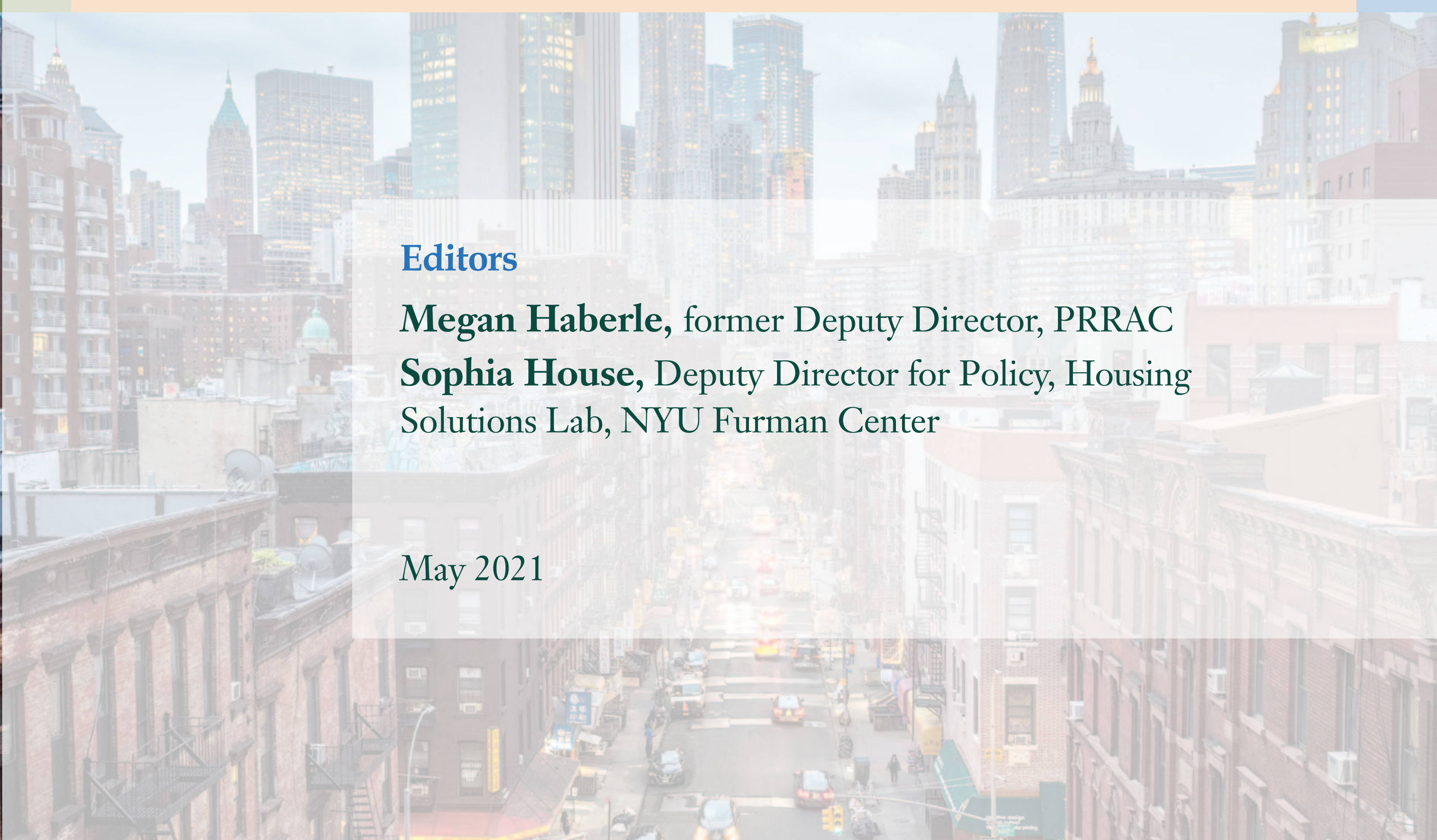

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Introduction

The COVID-19 pandemic slowed the pace and vector of our social lives, clearing mental and emotional space for our nation to reckon with the blithe lynching of Mr. George Floyd. The visualization of such cruelty, caught on camera, highlighted the fact that systems and behaviors can, and often do, threaten the well-being of African Americans and many others in our society. Among other effects, the nature of Mr. Floyd's murder and compelling power of the ensuing calls for social justice catalyzed billions of dollars in commitments by lenders to close the "racial inequality gaps,"[2] "advance inclusive economic recovery,"[3] "promote racial, ethnic, and gender equity,"[4] "advance racial equity,"[5] "boost economic opportunity,"[6] "end systemic racism and support economic empowerment of African Americans and low- and moderate-income communities,"[7] "address social and economic inequities,"[8] and "support economic opportunity initiatives."[9]

1 This essay does not constitute legal interpretation, guidance, or advice of the Consumer Financial Protection Bureau. Any opinions or views stated by the authors are the authors' own and may not represent the Bureau's views.

2 Press Release, Citigroup Inc., *Citi Launches More Than $1 Billion in Strategic Initiatives to Help Close the Racial Wealth Gap* (Sept. 23, 2020), www.citigroup.com/citi/news/2020/200923a.htms.

3 Press release, BMO, *BMO Commits $5 Billion to Advance Inclusive Economic Recovery in the U.S.* (Nov. 10, 2020), https://newsroom.bmo.com/2020-11-10-BMO-Commits-5-Billion-to-Advance-Inclusive-Economic-Recovery-in-the-U-S.

4 Press Release, Am. Express, *American Express Announces $1 Billion Action Plan to Promote Racial, Ethnic and Gender Equity for Colleagues, Customers and Communities* (Oct. 29, 2020), https://about.americanexpress.com/all-news/news-details/2020/American-Express-Announces-1-Billion-Action-Plan n-to-Promote-Racial-Ethnic-and-Gender-Equity-for-Colleagues-Customers-and-Communities/default.aspx.

5 Press Release, JPMorgan Chase & Co., *JPMorgan Chase Commits $30 Billion to Advance Racial Equity* (Oct. 8, 2020), https://www.jpmorganchase.com/news-stories/jpmc-commits-30-billion-to-advance-racial-equity www.jpmorganchase.com/news-stories/jpmc-commits-30-billion-to-advance-racial-equity.

6 Press Release, Huntington Bancshares, *Huntington Announces $20 Billion Community Plan to Help Boost Economic Opportunity Throughout its Seven-state Footprint* (Sept. 1, 2020), http://huntington-ir.com/ne/news/hban09012020.pdf.

7 Press Release, PNC, *PNC Commits More Than $1 Billion To Help End Systemic Racism and Support Economic Empowerment of African Americans and Low- And Moderate-Income Communities* (June 18, 2020), https://pnc.mediaroom.com/2020-06-18-PNC-Commits-More-Than-1-Billion-To-Help-End-Systemic-Racism-And-Support-Economic-Empowerment-Of-African-Americans-And-Low-And-Moderate-Income-Communities.

8 Press Release, U.S. Bank, *U.S. Bank to rebuild in Minneapolis; Announces multiple investments and initiatives to address social and economic inequities* (June 5, 2020), https://www.usbank.com/newsroom/stories/us-bank-to-rebuild-in-minneapolis-announces-multiple-investments-and-initiatives-to-address-social-and-economic-inequities.html.

9 Press Release, Bank of Am., *Bank of America Announces $1 Billion/4-Year Commitment to Support Economic Opportunity Initiatives* (June 2, 2020), https://newsroom.bankofamerica.com/press-releases/bank-america-announces-four-year-1-billion-commitment-supporting-economic.

These historic financial commitments to equity and racial and social justice have sparked interest in a 45-year old provision of the Equal Credit Opportunity Act (ECOA) that authorizes Special Purpose Credit Programs (SPCPs), which are defined as "credit assistance program[s]" for economically or socially disadvantaged consumers and commercial enterprises.[10] SPCPs allow non-profit and for-profit organizations wide latitude in designing credit assistance programs that both increase access to credit and provide favorable terms and conditions to economically disadvantaged groups. SPCPs represent a significant and unheralded tool to address historical injustices and continuing systemic racism in the credit markets and, more broadly, in racial wealth inequity. We hope that SPCPs are an idea whose time has finally come.

Racial Wealth Inequity and its Historical Underpinnings

Given its enormous impact on a variety of life opportunities, including education, housing, employment, social capital, and intergenerational transfers, the single best measure of racial inequity is wealth. The Federal Reserve recently released updated racial wealth data from its 2019 Survey of Consumer Finance finding that African American households had a mean of $24,100 in total wealth accumulation. In comparison, non-Hispanic white households had a mean of $188,200 in total wealth accumulation.[11] The enormous racial wealth gap not only harms African Americans but has broader ramifications across the entire economy impacting all Americans. For example, one industry study estimated that closing racial gaps in wages, housing, lending opportunities, and access to higher education would contribute an additional $5 trillion to American GDP over the next five years.[12]

In the United States, the single most important means of accumulating wealth for most families is homeownership, and owning a home is an even greater component of wealth composition for African American families. In fact, home equity represents 57% of the net worth of Black households compared to just 41% of the net worth of white households.[13] However, at the end of 2020, the homeownership rate gap between African Americans and whites stood at 30.4 percent,[14] and the gap has consistently exceeded 25 percent throughout the twentieth century. Closing the racial homeownership gap will thus play an important role in narrowing the racial wealth gap. One study of Survey of Income and Program Participation (SIPP) data collected in 2011 concluded that eliminating

10 121 Cong. Rec. 16,743; 94th Cong., 1st Sess. (June 3, 1975) (the ECOA "states that a person may not be denied credit because of his race, but economically or socially disadvantaged people may be given preferential treatment in the granting of credit without the lender being in violation of the law").

11 Board of Governors of the Fed. Reserve Sys., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances* (Sept. 28, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm.

12 Citi, *Closing the Racial Inequality Gap: The Economic Cost of Black Inequality in the U.S., 7* (Sept. 2020), https://ir.citi.com/%2FPRxPvgNWu319AU1ajGf%2BsKbjJjBJSaTOSdw2DF4xynPwFB8a2jV1FaA3Idy7vY59bOtN2lxVQM%3D.

13 Michael Neal & Alanna McCargo, *How Economic Crisis and Sudden Disasters Increase Racial Disparities in Homeownership*, Urban Institute (June 2020).

14 Federal Reserve Bank of St. Louis, *Homeownership Rate for the United States: Black or African American Alone* (Feb. 2, 2021), https://fred.stlouisfed.org/series/BOAAAHORUSQ156N.

disparities in homeownership rates and equity appreciation would alone reduce the median racial wealth gap by nearly 50 percent.[15]

Since few people have the financial resources to purchase a home without obtaining financing, a key step to achieving homeownership is fair and equitable access to credit. Unfortunately, African Americans and other minorities have faced a long history of discrimination and economic exclusion in obtaining credit or the increased cost of credit for home purchasing. Such credit discrimination by both governmental and private actors was driven by the odious notion that property value was inextricably tied to race. In other words, the fact that properties were owned by, or even located near, African Americans had a negative impact on their valuations and thereby increased credit risk. This legacy persists to this day.[16]

Perhaps the most well-known example of lending discrimination is the notorious practice of redlining whereby lenders refused to provide credit to minority neighborhoods.[17] While discrimination by private financial institutions was widespread, the practice of redlining was institutionalized by the Home Owners' Loan Corporation (HOLC), established in 1933 to address the problem of rising home foreclosures during the Great Depression. Because HOLC was financing properties in default and foreclosure, it introduced standardized appraisals to measure risk for its loans. In 1935, the HOLC conducted a City Survey Program to appraise the level of real estate risk in hundreds of cities across the United States. HOLC distributed and collected surveys from local real estate professionals and lenders that included explicit questions regarding racial composition of neighborhoods, "infiltration" and "detrimental influences" such as "Negroes." Based on the survey information, HOLC created color-coded residential security maps that indicated the relative riskiness of different neighborhoods. The first geographic category (A) was coded green and described those areas as "new, homogenous, and in demand as residential locations in good times and bad," consisting predominantly of "American business and professional men." The second category (B) was coded blue and covered stable neighborhoods that were still desirable. The third category (C) was coded yellow and defined areas that were "definitely declining." Finally, the fourth category (D)—colored red—denoted "hazardous" neighborhoods "in which the things taking place in [yellow] areas have already happened…characterized by detrimental influences of a pronounced degree, undesirable populations or an infiltration of it."[18]

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15 Amy Traub, Catherine Ruetschlin, Laura Sullivan, Tatjana Meschede, Lars Dietrich, and Thomas Shapiro, *The Racial Wealth Gap: Why Policy Matters*, 11-14 (2015), https://ir.citi.com/%2FPRxPvgNWu319AU1ajGf%2BsKbjJjBJSaTOSdw2DF4xynPwFB8a2jV1FaA3Idy7vY59bOtN2lxVQM%3D.

16 *See* Michela Zonta, *Racial Disparities in Home Appreciation: Implications of the Racially Segmented Housing Market for African Americans' Equity Building and the Enforcement of Fair Housing Policies* (July 15, 2019), https://www.americanprogress.org/issues/economy/reports/2019/07/15/469838/racial-disparities-home-appreciation/.

17 *See generally* Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (1985); Charles Nier, *The Shadow of Credit: The Historical Origins of Racial Predatory Lending and Its Impact Upon African American Wealth Accumulation*, 11 U. Pa. J. L. & Social Change 131 (2007-2008); Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017).

18 Jackson, 197-98.

In making these classifications, HOLC relied on "notions of ethnic and racial worth" commonly utilized by private real estate professionals and lenders.[19] As a result, most neighborhoods with heavy minority populations, including in many large northern cities, were coded red and thereby "redlined." While HOLC did make loans in red and yellow areas, it directly placed the federal government's seal of approval on the linkage between real estate value and race and, consequently, prompted private industries' institutionalization of the HOLC's racially discriminatory policies.[20]

Perhaps the greatest impact of HOLC was on the lending practices of the Federal Housing Administration (FHA). The FHA was formed in 1937 to promote "sound home financing on reasonable terms, and to exert a stabilizing influence on the mortgage markets."[21] The FHA's primary role was to insure private lenders against potential losses from mortgage lending and thereby make possible lending with low down payments or longer loan terms. The FHA required an "unbiased professional estimate" as a prerequisite to any loan guarantee to ensure that the value of the property would exceed the outstanding mortgage debt. Acting on HOLC's rating system, the FHA developed even more elaborate guidance on race and real estate value for its appraisers in its Underwriting Manual. It stated: "if a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes." Further, the Manual warned of the dangers of "infiltration of inharmonious racial groups and nationality groups." To prevent such "infiltration" the Manual recommended "subdivisions regulations and suitable restrictive covenants as an excellent method to maintain neighborhood stability."[22] In short, the entire FHA appraisal process was based on the premise that racial segregation was necessary to ensure property values.[23]

Significantly, the FHA's actions were adopted by private financial institutions that institutionalized the discriminatory appraisal process as well as the practice of redlining. This combination of governmental and private policies effectively precluded mortgage lending to African American borrowers. Overall, between 1930 and 1960, "fewer than one percent of all mortgages in the nation were issued to African Americans."[24] Such discrimination drove lower homeownership rates among African-American families in comparison to white families by either excluding them from mortgages entirely or by forcing them to turn to more expensive alternatives, such as installment contracts. Given the historical legacy of discrimination and its continuing impact, racial homeownership and wealth gaps will not be eliminated, or even significantly reduced, without sustained efforts by governmental and private actors. 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.

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19 *Id*. at 199.

20 Amy Hillier, *Redlining and the Home Owners' Loan Corporation*, 29 Journal of Urban History 394, 398 (2003).

21 Jackson, 203.

22 *Id*., 208. Rothstein, 65-66.

23 Melvin Oliver & Thomas Shapiro, *Black Wealth White Wealth: A New Perspective on Racial Inequality* 18 (1995).

24 Daniel Kirp, et al., *Our Town: Race, Housing and the Soul of Suburbia* 7 (1995).

Special Purpose Credit Programs

Congress enacted the ECOA in 1974, initially prohibiting discrimination in credit on the basis of sex or marital status.[25] Two years later, Congress expanded the prohibition against discrimination in credit transactions to include age, race, color, religion, national origin, receipt of public assistance benefits, and exercise of rights under the Federal Consumer Credit Protection Act.[26] At the same time, under section 701(c) of the ECOA, Congress clarified that it does not constitute discrimination under the ECOA for a creditor to refuse to extend credit offered pursuant to an SPCP.27 ECOA and Regulation B, its implementing regulation, describes three types of SPCPs:

(1) Credit assistance programs expressly authorized by federal or state law, which must be for the benefit of an "economically disadvantaged class of persons."

(2) Any credit assistance program offered by a non-profit organization, which must be for the benefit of its members or the benefit of an "economically disadvantaged class of persons."

(3) A SPCP offered by a for-profit organization, which must be (i) established and administered 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 other applicants;[28] and (ii) established and administered pursuant to a written plan that identifies the benefiting class of persons and sets forth procedures and standards for extending credit pursuant to the program.[29]

As Regulation B makes clear, there are different requirements for SPCPs depending on whether the creditor is non-profit or a for-profit organization. For non-profit organizations, such as credit unions or community development financial institutions, a SPCP need only consist of a credit assistance program that benefits either its members or an "economically disadvantaged class of persons." In contrast to the requirements applicable to for-profit organizations, Regulation B and its official interpretation do not explicitly require a written plan or any evaluation of the non-profit organization's customary standards of creditworthiness upon a class of persons.

Furthermore, Regulation B and its official interpretation provide that a SPCP offered by non-profits and for-profit organizations may require participants to possess one or more common characteristics, such as race, national origin, or sex.[30] By permitting the consideration of a prohibited basis such as race, national origin, or sex in connection with a special purpose credit program,

25 *See* Pub. L. 93-495, sec. 701(a), 88 Stat. 1500, 1521 (1974).

26 *See* ECOA Amendments Act, Pub. L. 94-239, sec. 701(a), 90 Stat. 251, 251 (1976).

27 *See* Pub. L. 94-239, sec. 701(c)(3), 90 Stat. 251, 251 (1976).

28 *Id.* Official commentary provides that a determination that the program will benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms can be based on "a broad analysis using the organization's own research or data from outside sources, including governmental reports and studies." 12 C.F.R. § 1002.8(a)-5. Comment 8(a)-5 also provides that a bank could review Home Mortgage Disclosure Act (HMDA) data along with demographic data for an assessment that there is a need for a SPCP for low-income minority borrowers.

29 12 C.F.R. § 1002.8(a).

30 12 C.F.R. § 1002.8(c)

Congress protected a broad array of programs "specifically designed to prefer members of economically disadvantaged classes" and "to increase access to the credit market by persons previously foreclosed from it."[31] Congress provided examples of such programs, including government-sponsored housing credit subsidies for the aged or the poor and programs offering credit to a limited clientele such as credit union programs and educational loan programs.[32]

Using Historical and Societal Data to Establish Special Purpose Credit Programs

A for-profit creditor that wishes to establish an SPCP must make the determination that its program meets the requirements set forth in 701(c)(3). In designing an SPCP, the creditor must, among other requirements,[33] determine that the program "will benefit a class of persons who would otherwise be denied credit or would receive it on less favorable terms."[34] Despite the promise of SPCPs, creditors have used them only sparsely. When queried, for-profit financial institutions have cited regulatory uncertainty as a key obstacle to the use of SPCPs.[35] While the Consumer Financial Protection Bureau (CFPB) has received questions about multiple aspects of the requirements for for-profit SPCPs, a frequent request has been for more clarity about the factual predicate required to determine that an SPCP "will benefit a class of persons who would otherwise be denied credit or would receive it on less favorable terms."[36]

Regulation B provides creditors with guidance for developing compliant SPCPs, noting that this determination can be based on a broad analysis using the organization's own research or data from outside sources, including governmental reports and studies.[37] The Official Interpretations to

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31 S. Rep. No, 94-589, at 7, reprinted in 1976 U.S.C.C.A.N. 403, 409.

32 *See id.*

33 Regulation B sets forth compliance standards and general rules for SPCPs offered by for-profit organizations, including a requirement that the program be established and administered pursuant to a "written plan," 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 applying to the organization for a similar type and amount of credit, and not be administered with the purpose of evading the requirements of the ECOA or Regulation B. 12 C.F.R. § 1002.8.

34 12 C.F.R. § 1002.8(a)(1).

35 Many comments to the CFPB's Request for Information on the Equal Credit Opportunity Act and Regulation B from a variety of external stakeholders, including both consumer and civil rights advocates and industry representatives, indicate that special purpose credit programs may be one way to promote fair and responsible access to credit, but that there is a need for further guidance on compliant implementation of these programs. 85 Fed. Reg. 46600 (Aug. 3, 2020). For example, external stakeholders expressed uncertainty regarding the treatment of SPCPs under the Fair Housing Act which prohibits discrimination in residential real estate related transactions, including mortgage lending transactions, based on race, color, religion, sex, disability, familial status, or national origin. 42 U.S.C. Section 3601 et seq. On December 7, 2021, the Department of Housing and Urban Development released guidance concluding that SPCPs instituted in conformity with ECOA and Regulation B generally do not violate the Fair Housing Act. *See* https://www.hud.gov/sites/dfiles/GC/documents/Special_Purpose_Credit_Program_OGC_guidance_1s2-6-2021.pdf.

36 *See e.g.,* NewsByte, American Bankers Association, *CFPB Provides ABA-Advocated ECOA Guidance* (Dec. 21, 2020), https://bankingjournal.aba.com/2020/12/cfpb-provides-aba-advocated-ecoa-guidance/#_ga=2.108467648.379428225.1614646671-1787348309.1599686058.

37 Official Interpretations, 12 C.F.R. pt. 1002 (supp. I), § 1002.8, ¶ 8(a)-5.

Regulation B provide two examples: first, "a creditor might design new products to reach consumers who would not meet, or have not met, its traditional standards of creditworthiness due to such factors as credit inexperience or the use of credit sources that may not report to consumer reporting agencies"; second, "a bank could review [HMDA] data along with demographic data for its assessment area and conclude that there is a need for a special purpose credit program for low-income minority borrowers."[38]

In December 2020, the CFPB issued an Advisory Opinion, which is an interpretive rule (IR) to clarify the guidance set forth in Regulation B, 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."[39] The CFPB's IR stated that for-profit organizations may rely on a wide range of research or data to analyze whether a SPCP is needed to benefit a class of persons who would otherwise be denied credit or would receive it on less favorable terms. The IR states that for-profit creditors may rely on research or data that are already in the public domain, such as HMDA and "other governmental or academic reports and studies exploring the historical and societal causes and effects of discrimination."[40] For-profit institutions can use the type of historical and societal evidence cited above, as well as their own research, to establish compliant SPCPs.

For example, a for-profit lender could rely upon historical evidence of redlining, such as the HOLC residential security maps, to focus on those minority neighborhoods that HOLC coded red and designated "hazardous."[41] The lender could connect this historical evidence with an evaluation of current HMDA data or other sources of information regarding the current availability and cost of credit in these same neighborhoods to demonstrate a program "will benefit a class of persons who would otherwise be denied credit or would receive it on less favorable terms."[42] If a lender makes such a determination, the SPCP could offer relaxed underwriting guidelines, down payment assistance, reduced interest rates, or other favorable terms and conditions to the designated class of persons in such neighborhoods.[43] By providing access to credit on favorable terms, an SPCP could address racial

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38 *Id*.

39 Kathleen L. Kraninger, CFPB Director, *Consumer Financial Protection Bureau Issues Advisory Opinion to Help Expand Fair, Equitable, and Nondiscriminatory Access to Credit* (Dec. 21, 2020), https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-issues-advisory-opinion-to-help-expand-fair-equitable-and-nondiscriminatory-access-to-credit/.

40 Equal Credit Opportunity (Regulation B); Special Purpose Credit Programs, 86 Fed. Reg. 3762 (Jan. 15, 2021), https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_special-purpose-credit-program_2020-12.pdf.

41 *See* Robert Nelson et al., *Mapping Inequality: Redlining in New Deal America,* American Panorama, Digital Scholarship Lab, University of Richmond (2018), https://dsl.richmond.edu/panorama/redlining/#loc=5/39.1/-94.58.

42 *See* Daniel Aaronson, Daniel Hartley, & Bhashkar Mazumder, *The Effects of the 1930s HOLC "Redlining" Maps*, Federal Reserve Bank of Chicago, WP 2017-12 (Revised Aug. 2020).

43 *See* Relman Colfax PLLC and National Fair Housing Alliance, *Special Purpose Credit Programs: How a Powerful Tool for Addressing Lending Disparities Fits Within the Antidiscrimination Law Ecosystem* (Nov. 2020), https://nationalfairhousing.org/wp-content/uploads/2020/11/NFHA_Relman_SPCP_Article.pdf.

inequities created by historical redlining of minority areas and its continuing legacy. Such investments in minority neighborhoods could increase homeownership or home appreciation rates and have a broader impact on the racial wealth gap.

Conclusion

Promoting the use of SPCPs is a central priority for the CFPB's efforts to "take bold and swift action on racial equity."[44] On February 22, 2022, the CFPB, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Department of Housing and Urban Development, the Department of Justice, and the Federal Housing Finance Agency issued an Interagency Statement to encourage creditors to explore opportunities to develop SPCPs consistent with ECOA and Regulation B, as well as applicable safe and sound lending principles, as they consider how they may expand access to credit.[45] Creditors implementing special purpose credit programs are encouraged to discuss this essay, the IR, Interagency Statement, or any aspect of these programs with the CFPB or other regulators. The CFPB looks forward to staying engaged with non-profits, lenders, state and local regulators, academics, consumer advocates, and civil rights groups to advance the use of this valuable tool on behalf of "economically disadvantaged" groups and in the broader struggle to address racial wealth inequity.

44 David Uejio, CFPB Acting Director, *The Bureau is taking much-needed action to protect consumers, particularly the most economically vulnerable* (Jan. 28, 2021), https://www.consumerfinance.gov/about-us/blog/the-bureau-is-taking-much-needed-action-to-protect-consumers-particularly-the-most-economically-vulnerable/.

45 CFPB, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, et al., *Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B* (Feb. 22, 2022), https://files.consumerfinance.gov/f/documents/cfpb_spcp_interagency-statement_2022-02.pdf.