

Press Releases

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OTS 98-48 - OTS Offers 'Special Purpose Credit Programs' Guidance Office of Thrift Supervision

NEWS

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For further information

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OTS Offers 'Special Purpose Credit Programs' Guidance

In the attached document, the Office of Thrift Supervision (OTS) explains in a question and answer format what "special purpose credit programs" are, and offers guidance on how thrift institutions under its supervision may develop the programs. Each thrift regulated by OTS will receive the information, and OTS is making the material available to community groups nationwide.

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The Office of Thrift Supervision (OTS), a bureau of the U.S. Treasury, regulates and supervises the nation's thrift industry. OTS' mission is to ensure the safety and soundness of thrift institutions and to support their role as home mortgage lenders and providers of other community credit and financial services. For copies of news releases and other documents call PubliFax at 202/906-5660, or visit the OTS web page at www.ots.treas.gov.

Office of Thrift Supervision

Questions **&** **A**nswers

on Special Purpose Credit Programs June, 1998

Message from the Director

We have received inquiries from savings associations wishing to establish "special purpose credit programs" under the Equal Credit Opportunity Act and its implementing regulations to meet special social needs. We have prepared the following questions and answers to be helpful to institutions seeking to develop special purpose credit programs and to community groups and others interested in learning more about the area. These questions and answers explain what a special purpose credit program is and how an institution can set up its own program. If you are contemplating setting up a special purpose credit program and have specific questions that are not answered in these questions and answers, please contact the compliance staff at your OTS regional office. We would be happy to provide guidance on how savings associations may develop programs that conform with applicable laws and regulations.

Ellen Seidman
Director

Questions and Answers

1. What is a special purpose credit program?

The Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. §§ 1691- 1691f, generally prohibits discrimination against applicants for credit on several bases, including race, color, religion, national origin, sex, marital status and age. It provides an exemption for "special purpose credit programs."

Under this exemption, a creditor may refuse to extend credit to non-targeted parties that is offered under any special purpose credit program to meet special social needs under standards prescribed in regulations by the Federal Reserve Board ("FRB"). The legislative history explains that the intent of the exemption is to authorize the FRB to specify standards that exempt classes of transactions when the record clearly demonstrates that the affected consumers would effectively be denied credit without such an exemption. In other words, special programs offered by creditors do not violate the ECOA if they meet the standards adopted by the FRB. The FRB's standards are in Regulation B, 12 C.F.R. Part 202. They are described below.

These Questions and Answers deal with special purpose credit programs offered by for-profit organizations. The ECOA also exempts credit programs offered through either a credit assistance program expressly authorized by law for an economically disadvantaged class of persons, or a credit assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons. These programs are beyond the scope of these Questions and Answers.

2. What are the requirements in Regulation B for a for-profit organization to offer or participate in a special purpose credit program?

There are two main requirements:

- First, the institution must describe in writing the class of persons the program is designed to benefit and the procedures and standards for extending credit under the program.
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- Second, the institution must administer the program to extend credit to a class of persons who, under the institution's customary standards of credit worthiness, probably would not receive such credit or would receive it on less favorable terms than are ordinarily available to others applying to the institution for a similar type and amount of credit.

3. Must I file an application with the OTS or obtain OTS approval to establish a special purpose credit program?

No. A creditor may establish and implement a special purpose credit program that meets the requirements of Regulation B without prior regulatory approval. It is the policy of the FRB not to determine whether individual programs qualify for special purpose credit status under Regulation B. The creditor offering the credit program must make this decision. When OTS conducts a compliance examination of a savings association, examiners will check to see whether the requirements of Regulation B have been satisfied. Therefore, it is important that the institution document compliance with Regulation B, including the requirements for a special purpose credit program.

4. I have never done a particular type of lending before (e.g., small business lending) and therefore my institution doesn't have customary standards on creditworthiness for this type of lending. May I nonetheless establish a special purpose credit program for this type of lending?

Yes. An institution may establish a special purpose credit program even where the institution lacks experience of its own in the type of lending to be covered by the program. An institution could use its own research or data from outside sources, including governmental reports and studies to determine that a program will benefit a class of people who might otherwise be denied credit or receive it on less favorable terms. For example, an institution might review data from the Small Business Administration, state agencies or private reports and studies. An institution may also conduct or commission its own study or survey (e.g., a telephone survey). An institution should retain a copy of each study or survey it relies upon in making this determination. We expect that institutions will give due consideration to prudent banking practices when developing such a program.

5. If I establish a special purpose credit program, may I collect otherwise prohibited data (e.g., race and national origin of applicants)?

Yes, but only if the information is needed to determine an applicant's eligibility for a particular program for which the applicant is applying. For example, an institution with a special purpose credit program promoting lending to African American small businesses may collect data on the race of the owner of the small business applicant to determine eligibility. However, the institution may not collect data on the owner's gender because this information is not needed to determine eligibility.

6. Is there a minimum or maximum size for a special purpose credit program?

No. Regulation B does not specify a minimum or maximum size for special purpose credit programs. An institution could establish a pilot program with a cap on the number of loans or the dollar volume of the loans. Furthermore, the program's standards and procedures may evolve over time as the institution obtains data and experience under the program. The institution may add or delete eligibility requirements such as race, sex or national origin as it obtains new data supporting such changes. Again, the data may be drawn from the institution's own experience or from outside studies. If eligibility requirements change, an institution's inquiries about applicants' protected characteristics may have to be adjusted accordingly so that only information pertinent to eligibility requirements is solicited.

7. May affirmative marketing and outreach to traditionally disadvantaged groups be the focus of an institution's marketing for a special purpose credit program?

Yes. An institution may combine a special purpose credit program with affirmative marketing and outreach. For example, an institution might establish a special purpose credit program for Latino applicants for small business loans. To market the program, the institution may send representatives to speak to predominantly Latino organizations about the availability and nature of the special purpose program. If a member of the organization wishes to apply for a loan under the program, the institution would ask the applicant whether he or she is Latino (explaining that the special program is available only to Latinos) and record the applicant's response.

8. To whom should I direct questions about establishing a special purpose credit program?

A savings association with questions about establishing a special purpose credit program should first contact compliance staff at its OTS regional office. The regional office will consult with Washington staff as needed to provide as much guidance as possible. OTS may also consult with FRB staff before providing guidance.

9. If I don't want to establish a special purpose credit program, may I nevertheless do marketing and outreach to traditionally disadvantaged groups?

Yes. An institution may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor. A creditor may reach out to any group for applications but the creditor may not make any oral or written statement, in advertising or otherwise, that would discourage, on a prohibited basis, a reasonable person from making or pursuing an application. A properly conducted affirmative marketing program would not violate Regulation B. For example, an institution may actively solicit business from African-American and Latino communities.

These Questions and Answers are intended only to provide general guidance to savings associations considering adopting special purpose credit programs. They do not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, or instrumentalities, its officers or employees, or any other person.