A series of federal and state statutes provides significant remedies to victims of credit discrimination. Violations of the Equal Credit Opportunity Act (ECOA), the Fair Housing Act (FHA), and 42 U.S.C. §§ 1981 and 1982 (hereinafter referred to as the federal Civil Rights Acts) can result not only in recovery of out-of-pocket damages but in recovery for such intangible injuries as humiliation, deprivation of rights, and damage to credit rating. These statutes also provide for punitive damages, equitable relief, and attorney fees.

Certain state credit discrimination statutes also provide for minimum statutory damages; state unfair or deceptive acts and practices statutes sometimes provide for treble damages or minimum statutory damages. The FHA and certain state discrimination laws provide consumers with relief pursuant to an administrative proceeding wherein the consumer need not pay attorney fees, filing fees, or investigational costs. Thus, victims of credit discrimination have an impressive array of remedies available to them.

These statutes prohibit credit discrimination when a creditor treats individuals differently because of certain specified factors that are referred to as “prohibited bases.” While the prohibited bases for discrimination vary by statute, one or more of the credit discrimination statutes prohibit discrimination on the basis of race, color, religion, national origin, sex, marital status, familial status, age, disability, public assistance status, and exercise of rights under federal consumer credit statutes. Other bases for discrimination, such as sexual orientation or location of a residence, are also actionable under certain state discrimination statutes and can sometimes be actionable under the federal statutes.

When discrimination is based directly on a prohibited basis this practice constitutes illegal disparate treatment. Illegal discrimination may also occur when a practice not discriminatory in and of itself has a disproportionate impact or effect on a protected class, such as minorities, women, the disabled, public assistance recipients, or older consumers. Such a practice may not be illegal if a creditor has a legitimate business purpose for its action and that purpose may not be achieved by less discriminatory means. When a creditor claims such a legitimate business purpose the person claiming discrimination must establish either that the purpose is not legitimate or that there are less discriminatory means of achieving the purpose.

In order to challenge a discriminatory practice the person bringing the action need not necessarily be a member of the group discriminated against, as long as the discrimination affects that person. For example, a white woman who was refused credit because she lived in an African American neighborhood has an action under the credit discrimination statutes. Under the FHA and federal Civil Rights Acts, the plaintiff could be a housing organization, neighbor, or other person affected by the discrimination against a credit applicant.

The credit discrimination statutes prohibit discrimination at all stages of a credit transaction, including differential treatment pre-application and during the application process, or concerning credit evaluation, credit terms, co-signer requirements, the price of related goods and insurance, loan servicing, and debt collection. Credit discrimination statutes reach more than just transactions with stated interest charges and may apply to leases, utility service, certain medical treatment, and other transactions in which the consumer’s obligation to pay is deferred until after receipt of the goods or services. Credit discrimination laws may even apply to differences in the cash price of the goods or services related to the credit transaction.

Footnotes


5 See Reg. B, 12 C.F.R. § 1002.3.

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