Despite the far-reaching remedies available, credit discrimination laws were not utilized significantly until the 1990s and may not yet be fully utilized. Throughout the 1980s only a small number of Equal Credit Opportunity Act (ECOA) cases were brought each year. The Fair Housing Act (FHA), the federal Civil Rights Acts, and state anti-discrimination statutes were rarely applied to credit discrimination.

In the 1990s more credit discrimination cases were brought, particularly after 1988 when Congress eliminated weaknesses in the FHA. In addition, several restrictive Supreme Court decisions in the employment discrimination area (which affected the interpretation of the credit discrimination laws) were overturned by the passage of the Civil Rights Act of 1991.

Federal agencies began to take a leadership role in the 1990s by bringing a series of credit discrimination cases. The Department of Justice, as well as the Federal Trade Commission and the Department of Housing and Urban Development, settled major cases against lenders’ discriminatory credit practices. The Federal Reserve Bank of Boston issued a seminal report defining for the first time the exact nature of banks’ racial discrimination in mortgage lending. Enforcement agencies, including the Office of the Comptroller of the Currency, began using paired testers to investigate possible discriminatory practices.

Public awareness also increased in the 1990s and 2000s concerning the existence of widespread credit discrimination and the consequences of that discrimination. More housing, and other non-profit community organizations, began to challenge credit discrimination and private litigants successfully used credit discrimination laws to challenge the scourges of predatory mortgage lending and reverse redlining.

Perhaps most importantly, consumer attorneys started to understand that credit discrimination statutes provide a promising avenue of attack in many different types of credit cases. Particularly attractive are the significant opportunities to recover large damages for intangible injuries, punitive damages, and attorney fees, as well as the option to bring cases in federal or state court and as individual or class actions. Consumer attorneys began utilizing credit discrimination statutes to challenge a multitude of abusive credit practices, including predatory lending and hidden broker kickbacks disproportionately charged to minority customers.

Footnotes


9 See Ch. 8 [3], infra.