This treatise also briefly treats two other federal statutes with some importance to credit discrimination. These two statutes, 42 U.S.C. §§ 1981 and 1982, are referred to throughout this treatise as the federal Civil Rights Acts. These are recodifications of statutes enacted after the Civil War.

Section 1981, among other things, guarantees to all persons within the jurisdiction of the United States the same right as white citizens to make and enforce contracts. Section 1982 provides all citizens with the same right as is enjoyed by white citizens to purchase, lease, sell, hold, and convey real and personal property.

These statutes clearly apply to many aspects of credit transactions and also apply to many transactions beyond the scope of the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA). They are particularly useful in challenging discrimination in the leasing and sale of personal property.

The federal Civil Rights Acts generally apply only to racial discrimination, but the Supreme Court has expanded the scope of the Acts to include certain types of ethnic discrimination. In addition, section 1981 should reach discrimination against non-citizens. On the other hand, section 1982 does not provide rights to non-citizens.

The federal Civil Rights Acts provide for actual and punitive damages, equitable relief and attorney fees. Like the FHA, and unlike the ECOA, there is no statutory cap on the size of punitive damages awards. Unlike both the FHA and the ECOA, the federal Civil Rights Acts only apply to cases of intentional discrimination and do not apply to cases of disparate impact—that is, the “effects test” is not available to prove violations of the federal Civil Rights Acts.

The Civil Rights Act of 1991 amended section 1981 significantly. It added two new subsections, (b) and (c), and redesignated the prior text as subsection (a). Subsection (b) added a definition of the phrase “make and enforce contracts,” stating that it extends to both the “making, performance, modification, and termination of contracts” and the “enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.” This definition makes clear that section 1981 applies to discrimination in a contractual relationship that occurs after the formation of the contract. Subsection (c) added a provision making clear that section 1981 prohibits discrimination by both private and governmental entities.

The limitations period for the federal Civil Rights Acts is somewhat complicated. The limitations period for a cause of action that could be brought under provisions of the Act that existed prior to the 1991 amendments is determined by state law, so the period may be longer or shorter than the FHA’s and the ECOA’s two-year limitations periods. To the extent, however, that a cause of action is made possible by the provisions added by the 1991 amendments, they are subject to the four-year “catch-all” federal statute of limitations found in 28 U.S.C. § 1658(a).

Footnotes


85 See, e.g., Campbell v. Forest Pres. Dist. of Cook Cty., Ill., 752 F.3d 665 (7th Cir. 2014).

86 See § 3.6.1 [1], infra.
87 See § 3.6.2 [2], infra.


89 See § 4.3 [3], infra (discussing the “effects” test).


