Another potentially useful tool for addressing credit discrimination is the Americans with Disabilities Act (ADA). The purpose of the ADA includes the “elimination of discrimination against individuals with disabilities” and the regulation of “commerce in order to address the major areas of discrimination faced day to day by people with disabilities.” The ADA may be especially useful in non-housing financing cases because the ECOA does not include disability as a prohibited basis.

Title III of the ADA prohibits discrimination on the basis of disability by places of public accommodations. Public accommodation is defined to include banks, retailers, and other service establishments. One significant and explicit prohibition under Title III of the ADA is the imposition or application of eligibility criteria that screen out or tend to screen out individuals with disabilities or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered. However, courts have generally held that while the ADA “operates to afford equal access to goods, services, facilities, privileges, advantages and accommodations, [it] does not regulate the content of such goods, services, facilities, privileges and advantages.” Therefore, while a lender “may not refuse to provide equal access to its mortgage policies on the basis of the disabilities of potential mortgagors, it [is] not required to alter the otherwise universally applicable terms or conditions of its mortgage policies to accommodate the disabilities of borrowers.” Thus, while a mortgage lender’s office would have to be accessible to persons with disabilities, for example, the lender would not have to alter its loan terms to accommodate a disability.

The limitations period for the ADA will be determined by state law. The remedies under the ADA may not be as comprehensive as those found in the other discrimination statutes because it does not provide for monetary damages in its private right of action.

Footnotes


97 42 U.S.C. § 12181(7)(F). See, e.g., Webster Bank v. Oakley, 830 A.2d 139, 160 (Conn. 2003) (“[M]ortgage servicing and enforcement are ‘services’ provided by [a place of public accommodation] under 42 U.S.C. § 12182(a), and that Title III of the ADA, therefore, applies to the provision of such services.”).


100 Id.

101 Gaona v. Town & Country Credit, 324 F.3d 1050 (8th Cir. 2003).