Unlike Title VI, the Equal Credit Opportunity Act (ECOA) provides for a private right of action not only for disparate treatment on the basis of race, color, religion, national origin, sex, marital status, or age, but also for practices that have a disparate impact on those bases. Notably, the ECOA also provides a private right of action to challenge disparate treatment or impact on the basis that a consumer’s applicant’s income derives from a public assistance program.

While limitations as to the scope of the ECOA mean that it does not reach as many criminal justice debt practices as Title VI, the ECOA can target payment plans or deferrals of payment established for the repayment of court debt. The ECOA can challenge practices by creditors; “creditor” is defined to include any “government or governmental subdivision.” Courts have even concluded that the ECOA amounts to an explicit waiver of sovereign immunity with respect to claims brought under the ECOA against the federal government.

The ECOA applies only to credit transactions. Court fines and fees may not initially appear to involve a credit transaction. But the ECOA defines “credit” as including “the right granted by a creditor to a debtor to defer payment of debt.” The Third Circuit construed identical language in the Truth in Lending Act as creating a credit transaction when a municipal water authority gave consumers the right to defer payment of water and sewer debts and to pay them off in installments. Applying this reasoning to the ECOA context, court debt might not be credit when it was imposed, but if the creditor or a debt buyer subsequently gives the debtor a payment plan or otherwise gives the debtor the right to defer payment, that action might constitute an extension of credit.

The ECOA only provides protection for “applicants,” defined as “any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.” Though individuals with criminal justice debt did not “apply” for it in the usual sense, the Act is not limited to formal, written applications for extensions of credit. Under the ECOA, an application for credit can take many forms as long as it is “in accordance with procedures used by a creditor for the type of credit requested.”

Further, Regulation B under the ECOA defines “applicant” as “any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit.” This Regulation B definition has come under scrutiny, but, consistent with the salutary purposes of the ECOA, courts rely on Regulation B in applying the ECOA to contexts in which the plaintiff did not affirmatively apply for credit. This approach could potentially apply to individuals with criminal justice debt who have payment plans or deferrals of payment.

Footnotes

427 [393] Title VI is described at § 11.7.2 [1], supra.


11.7.3.1 Application of the ECOA to Court Debt


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[1] https://library.nclc.org/nclc/link/CA.11.07.02