Courts assessing lending discrimination claims have generally adopted the burden shifting and evidentiary framework used in employment discrimination cases. To make out a prima facie case of disparate impact, an ECOA plaintiff must: (1) identify a specific, facially neutral policy or practice adopted by the defendant; (2) allege a disparate impact on a protected group; and (3) show a causal relationship between the challenged policy or practice and the alleged disparate impact. If the plaintiff makes out a prima facie case, the burden shifts to the defendant to establish that the challenged practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest.

Footnotes

439 See, e.g., Lewis v. ACB Bus. Servs., Inc., 135 F.3d 389, 406 (6th Cir. 1998) (adapting burden allocation framework and burden allocation system found in Title VII cases to claims under ECOA); Moore v. United States Dep’t of Agric. ex rel. Farmers Home Admin., 55 F.3d 991, 995 (4th Cir. 1995) (noting that McDonnell Douglas applies to ECOA claims in the absence of direct evidence of discrimination); Chiang v. Schafer, 2008 WL 3925260, at *30 (D. V.I. Aug. 20, 2008) (“It is appropriate to import the analysis from Title VII cases in analyzing a claim of discrimination brought under ECOA and . . . utilize Title VII employment discrimination case law as it may be appropriate in the context of credit transaction discrimination.”), aff’d sub nom. Virgin Island Class Plaintiffs v. Vilsack, 362 Fed. Appx. 252 (3d Cir. 2010). See also National Consumer Law Center, Credit Discrimination § 4.3.2.2 [1] (7th ed. 2018), updated at www.nclc.org/library (discussing legislative history and official interpretations of ECOA identifying relevant framework as based on employment discrimination law).


441 See § 11.7.3.2.3 [2], infra.