Listed below are some practices that may be attacked through the use of credit discrimination statutes. These statutes may be used to attack common discriminatory practices and to challenge many different types of creditor practices. They may be used by individuals, groups, or in class actions. Some of the statutes also include procedural requirements that apply even when discrimination cannot be established. When discrimination laws are violated practitioners should carefully evaluate whether to proceed with a case seeking equitable relief, actual out-of-pocket damages, actual damages for intangible losses (such as humiliation, affront, deprivation of rights, damage to credit rating), punitive damages (potentially available even when the violation is procedural only, such as a defect in a required notice), attorney fees, or some combination of the above.

- **Discrimination against a wide variety of groups.** Credit discrimination laws prohibit discrimination on a number of bases in addition to race, national origin, sex, and religion. Creditors violate credit discrimination statutes if they discriminate:
  - against single parents, divorced women, pregnant women, or those taking in foster children;
  - on the basis of disability, including AIDS/HIV status;
  - on the basis of sexual orientation, but only in a few states or under certain limited circumstances; or
  - on the basis of age.
- **Discrimination based on source of income.** Credit discrimination statutes protect applicants whose income is derived from:
  - public assistance;
  - part-time employment;
  - alimony or child support; or
  - retirement benefits.
- **Denying or restricting credit to residents of certain geographic areas, known as redlining.** The practice of redlining is one of the most common and devastating forms of credit discrimination. Redlining can be challenged under the ECOA and the FHA if the residents of the area are predominately from a protected class. A few state credit discrimination laws explicitly prohibit geographic redlining.
- **Banks discouraging applications from communities of color.** It is illegal for a bank to avoid having branches in communities of color that are otherwise part of its service area, to target marketing to White applicants, and to otherwise discourage applications from communities of color.
- **Preferential treatment or coaching in the application process.** Discrimination in the lending process often does not consist of blatant racism or hostility against protected class members but rather exists in subtle forms of preference given to White applicants. Paired testers may be able to uncover creditors who treat individuals differently in the application process by helping only certain applicants overcome blemishes in their credit record. Seemingly identical applicants will consequently have very different looking files that the creditor (and the secondary market) will use to determine creditworthiness.
- **Differential treatment of American Indians living on reservations.** Redlining can specifically affect American Indians when creditors refuse credit to those living on reservations or seeking to finance property on reservation land. Even if a creditor has a legitimate business reason for such conduct, which has a disparate impact on American Indians, the conduct may be illegal if the same business consideration may be addressed using another factor that has a less disparate impact.
- **Reverse redlining.** Credit discrimination statutes may not only cover creditors denying credit but also high-interest rate lenders preying on protected class members. It is clearly illegal for a lender to offer low-interest loans to White applicants and high-interest loans to similarly qualified Black applicants; it may also be illegal for a lender only offering predatory terms to seek out primarily Black or other borrowers of color.
- **Car dealers, brokers, or others steering consumers of color to different creditors or charging them higher prices and fees.** Arrangers of credit are covered by the credit discrimination statutes, and it is illegal for them to steer consumers of color to different creditors or credit programs than their White counterparts—or to charge consumers of color more for credit and services.
- **Discrimination by all kinds of creditors.** Too often practitioners think only of discrimination in bank credit, credit cards, or similar market-rate credit. All creditors are subject to credit discrimination statutes, and actions can be brought against finance companies, loan brokers, car dealers, pawnbrokers, and others. Insurance companies are liable under the Fair Housing Act for discriminating in the provision of insurance for homes.
- **Discrimination by appraisers.** Appraisers may not use different standards or measures to appraise property if those standards or measures are derived from a prohibited basis.
- **Discrimination by eventual loan purchaser.** It is a violation of the credit discrimination laws for an institution that will purchase a loan to discriminate on a prohibited basis in the way it pre-approves or otherwise participates in the credit
determinations of an originating lender.

- **Discrimination by utilities.** A utility transaction is subject to the ECOA, so there cannot be differences in deposit requirements or disconnection procedures based on race, public assistance status, or other prohibited bases.

- **Differing standards as to when a merchant requires cash up front.** Many sellers require cash up front or even before payment, while others will bill the consumer and expect one lump sum payment (without any finance charges) within approximately thirty days. The ECOA prohibits sellers from requiring cash up front from public assistance recipients, single mothers, or other protected groups if the same seller allows deferral of payment for others.

- **Discrimination in leases.** Credit discrimination laws apply to certain types of leases.10

- **Different requirements as to collateral, co-signers, down payments, guarantors.** A creditor may seek whatever reasonable protection it wants against a consumer’s potential default, but it may not discriminate in the type of protection it seeks if the reason for this difference is the applicant’s race, or some other prohibited basis.

- **Requiring a spouse as co-signer.** The ECOA has detailed rules as to when a creditor may and may not seek a spouse’s co-signature. A successful ECOA challenge to a creditor’s violation of these rules may void the spouse’s improperly induced signature and provide the spouse with an action for damages equal to the full extent of any obligation resulting from the improper signature.

- **Organizations concerned with home mortgage discrimination can bring actions in their own name.** Although the ECOA requires the plaintiff to be an applicant or someone obligated to pay a loan, the FHA allows housing organizations and others to institute suit as long as they are in any way aggrieved.

- **Defects in notice of reasons for credit denial.** The ECOA requires that creditors provide a specific notice to applicants when taking an adverse action. The creditor may be liable for actual damages, punitive damages, and attorney fees if it fails to provide this notice, if the reason stated for the adverse action is not specific enough or is not the creditor’s real reason, or if the notice is otherwise defective.

- **Home improvement contractor reneging on promised credit or changing credit terms.** Home improvement contractors may promise favorable credit terms but then renege after the work has been done, often saying that the application has not been approved. This behavior is an ECOA violation if the contractor does not notify the applicant of the adverse action within thirty days of the credit application.

- **Termination or denial of credit because of a Truth in Lending (TIL) or other consumer credit claim.** Creditors may not discriminate against an applicant because the applicant has in good faith exercised their rights under various federal consumer protection laws. Thus, even though a consumer has sued a creditor under such a law, the creditor and other creditors may not use the suit as the basis for denying credit or terminating existing credit.

- **Reporting credit history inaccurately because of a TIL or other federal consumer credit claim.** It is an ECOA violation for a creditor to report inaccurate information about a customer to a consumer reporting agency because that individual is pursuing a consumer credit claim against the creditor.

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**Footnotes**

10 See § 2.2.2.2 [1], infra.