

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
OF AVALON

METROPOLIS BANK, *Plaintiff/Counter-Defendant*,

v.

STONEFIELD BAKERY, LLC;
JANET A. STONE;
JONATHAN H. STONE; and
MARY L. FIELD, *Defendants/Counter-Plaintiffs*.

PROBATIO, District Judge.

This matter is before the Court on the Plaintiff's motion for summary judgment on all counts of its Verified Complaint and the Defendants' counterclaims (the "Motion," Dkt. 138). The Defendants filed a joint response in opposition to the Motion (Dkt. 139), and the Plaintiff filed a reply (Dkt. 140). For the following reasons, the Motion is granted, the Plaintiff is entitled to judgment on its affirmative claims and the Defendants' counterclaims (Dkt. 15) are dismissed with prejudice.

I. FACTS

Unless otherwise noted, the following facts are not in dispute.

Janet Stone and Mary Field are longtime friends, business partners, and equal co-owners of Stonefield Bakery in downtown Camelot, in the State of Avalon. Ms. Stone's husband, Jonathan Stone, is a successful certified public accountant in private practice at the firm of Stone & Steel, P.A., also located in downtown Camelot. Mss. Stone and Field met in 2010 while attending the nationally-renowned Avalon Culinary Institute, from which both women graduated with honors. Upon graduation, Ms. Stone took a position managing a local bakery in the suburb of Camelot Lakes. For her part, Ms. Field traveled abroad to France, where she spent several years as a pâtissière learning to master the art of fine French pastry. Though continents apart, the two women kept in close contact. Upon Ms. Field's return to the

United States in late 2015, Ms. Field approached Ms. Stone about opening their own bakery.

By February of 2016, the women had formulated a business plan, scouted potential locations and facilities with adequate space and pre-existing structure for a bakery, gathered a modest amount of initial investment capital between themselves, and explored various options for obtaining the additional financing they felt would be required to launch their new venture. The following month, they formed Stonefield Bakery, LLC (“Stonefield”), a limited liability company formed under the laws of the State of Avalon. Mss. Stone and Field have been the sole members and co-managers of Stonefield since its formation. Each woman holds 500 of the company’s 1,000 membership units, mirroring their equal initial capital investments of \$25,000 each.

In early March 2016, Ms. Stone and Ms. Field jointly met with a business loan officer (“Loan Officer”) at the Camelot branch of Metropolis Bank (“Metropolis”) to discuss financing options for the acquisition and operation of the new bakery. In the days that followed the initial meeting, Stonefield submitted a business loan application to Metropolis. Ms. Stone avers, and there is no evidence before the Court to the contrary, that she personally completed the application, with some limited input from Ms. Field and minor assistance from Mr. Stone, and delivered the same to the Loan Officer. Metropolis processed the application, underwrote the loan request, and issued a commitment letter indicating the terms on which Metropolis was prepared to make a loan of \$1,000,000 to Stonefield as principal borrower. In addition to a first mortgage in the real property that Stonefield had contracted to purchase for the bakery and a security interest in the bakery’s personalty, the commitment letter recited the parties’ understanding that Ms. Stone, Ms. Field, and Mr. Stone would offer their personal guaranties of the debt as additional collateral. On March 15, 2016, Mss. Stone and Field executed the commitment letter and promptly returned it to Metropolis. The loan closed 30 days later and was evidenced by a promissory note, mortgage, business loan agreement, commercial security agreement, and individual guaranties of Ms. Field, Ms. Stone, and Mr. Stone.

There appears to be some disagreement among the parties as to whether Metropolis affirmatively requested the three individual defendants to provide personal guaranties as a condition of extending credit to Stonefield, or

alternatively, whether the guarantors volunteered to provide guaranties to induce the bank to make the loan. Mss. Stone and Field claim that during their initial meeting at Metropolis, the Loan Officer insisted that the bank would not make the loan without a further offer of collateral in addition to the guaranties of Ms. Stone and Ms. Field, and inquired as to whether the women would be able to procure additional security in the form of another guaranty. Ms. Stone claims she offered to ask her husband to provide a guaranty, and the Loan Officer seemed receptive to that suggestion, though she also believed the bank was well aware that Mr. Stone had no ownership interest in and was not otherwise involved in the management or operations of the bakery. For its part, Metropolis contends that the guarantors offered their personal guaranties willingly as an inducement to the bank to loan such a sizeable sum of money to a fledgling bakery. It is undisputed that Stonefield was not independently creditworthy of a million-dollar loan. It also appears the guaranties of Ms. Stone and Ms. Field, without more, would have been insufficient to satisfy the bank's credit and underwriting guidelines for the loan requested. Nevertheless, as the Court will explain in greater detail, *infra*, resolution of the claims in this case turns not upon issues of fact, but issues of law.

Regrettably, due in significant part to the unwelcome gale known as Hurricane Arthur, which struck a large swath of eastern Avalon during the first few days of May 2016, many small retail businesses and restaurants in downtown Camelot sustained significant losses, both from property damage and loss of revenue resulting from decreased foot traffic. Stonefield's nascent business was no exception, and with a lack of clientele in Camelot's downtown district, it struggled to get off the ground. By the fall of 2016, Stonefield defaulted on its payment of the Metropolis loan. Metropolis and Stonefield briefly, albeit unsuccessfully, explored avenues to restructure the lending relationship. In January of 2017, Metropolis declared the loan in default, accelerated payment of the balance due on the note, and made demand to Stonefield and the guarantors for payment. When payment was not forthcoming, Metropolis filed a five-count Verified Complaint, seeking foreclosure of the lien of its mortgage on the Stonefield real property and damages for breach of the promissory note and guaranties.

After the Court denied the Defendants' motion to dismiss the Verified Complaint, the Defendants filed an answer accompanied by two counterclaims. The first counterclaim, brought in the right of Stonefield, alleges Metropolis required the personal guaranty of Mr. Stone simply because Mr. Stone was married to one of its co-owners, Ms. Stone. Thus, Stonefield

claims, Metropolis discriminated against it, apparently on the basis of the marital status imputed to the company by virtue of the marriage of one of its owners to Mr. Stone, in violation of the Equal Credit Opportunity Act, set forth at 15 U.S.C. § 1691(a) (the “ECOA”), as well as certain provisions of the ECOA’s implementing regulation, known as Regulation B, found at 12 C.F.R. § 202.7. In a similar vein, the second counterclaim, brought in the right of Mr. Stone individually, avers Metropolis discriminated against Mr. Stone, in violation of the ECOA and Regulation B, by requiring him to sign a guaranty of a business loan made to his wife’s company for no other reason than his status as spouse of one of the company’s two principals, Ms. Stone.

At the close of discovery, Metropolis filed the Motion that is now before the Court. By way of the Motion, Metropolis seeks summary judgment in its favor and against the Defendants, jointly and severally, as to all counts of the Verified Complaint. Additionally, Metropolis seeks summary judgment in its favor as to both counterclaims. The Defendants filed a joint response in opposition to Metropolis’s Motion, and Metropolis filed a reply after obtaining leave of Court for the same. The Court has considered the parties’ submissions and will grant the Motion for the reasons set forth below.

II. ANALYSIS

A. Jurisdiction and Legal Standard on Summary Judgment

At the outset, we note that we possess jurisdiction. All Defendants are citizens of the State of Avalon, while the Plaintiff is an Atlantis state-chartered bank that maintains its principal place of business in the State of Atlantis. The amount in controversy in this case also clearly exceeds \$75,000. Therefore, we have jurisdiction of this case by virtue of the parties’ diversity of citizenship and the adequacy of the amount in controversy, pursuant to 28 U.S.C. § 1332. Moreover, the Defendants’ counterclaims, which are predicated upon a federal statute, invoke the Court’s jurisdiction of a federal question.

We begin our analysis here by briefly recounting the familiar legal standard on a motion for summary judgment. Pursuant to Federal Rule of Civil Procedure 56, summary judgment is appropriate if the movant demonstrates that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a). If the movant carries its burden, the nonmoving party must set forth specific facts sufficient to raise a genuine issue for trial. The Court views the evidence and

all inferences that may reasonably be drawn therefrom in the light most favorable to the nonmoving party.

B. Metropolis's Claims for Foreclosure and Breach of Contract

There can be little doubt that Metropolis is entitled to judgment as a matter of law on all counts of its Verified Complaint. Under Avalon law, a claim for breach of a promissory note or breach of a loan guaranty has the same elements as a claim for breach of contract. To establish that it is entitled to judgment on its contract claims, Metropolis must show that there is no genuine dispute of fact as to the existence of the contracts in question, the breach thereof by the defendants, and resulting damages.

Here, Metropolis's claims are predicated upon the Defendants' failure to pay the loan when due or upon demand after default and notice. The Defendants admit that they defaulted in payment of the loan and raise no challenge to Metropolis's affirmative claims. Additionally, the Court notes that Metropolis's motion and the predicate facts upon which its claims for foreclosure and breach of contract rest are sufficiently supported by the affidavit of its vice president of business lending. Accordingly, Metropolis is entitled to summary judgment as to all counts of its Verified Complaint. This does not end our inquiry, however, because Metropolis has also sought summary judgment on the counterclaims asserted by Stonefield and Mr. Stone.

C. The Counterclaims of Stonefield Bakery and Mr. Stone

i. Overview of the ECOA and Regulation B

Both of the Defendants' counterclaims are predicated upon Metropolis's alleged violations of the ECOA. Before delving into the issues surrounding summary judgment on the counterclaims, however, a brief overview of the statute and regulation pertinent to the Court's decision will be instructive.

As originally enacted in 1974, the ECOA's primary purpose was to combat credit discrimination against a married woman, to whom lenders traditionally refused to extend individual credit in the absence of a guaranty of the debt by her husband. *See Mayes v. Chrysler Credit Corp.*, 37 F.3d 9, 11 (1st Cir. 1994); *see also Moran Foods, Inc. v. Mid-Atl. Mkt. Dev. Co., LLC*, 476 F.3d 436, 441 (7th Cir. 2007) (discussing that the ECOA was originally enacted to forbid lenders from denying individual credit to a woman on the basis of the

belief that she would not be an acceptable credit risk because she would necessarily be distracted by child care or some other stereotypically female responsibility). The ECOA was amended in 1976 to add race, religion, age, and other characteristics of credit applicants to the list of protected traits that Congress had determined “are, and must be, irrelevant to a credit judgment.” S. REP. 94-589, 3, 1976 U.S.C.C.A.N. 403, 405.

The ECOA makes it “unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction . . . on the basis of . . . sex or marital status” 15 U.S.C. § 1691(a). Pertinent to the Court’s interpretation of this prohibition is the term “applicant,” which the ECOA defines 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.” 15 U.S.C. § 1691a(b). Further, the ECOA defines “person” to mean “a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.” 15 U.S.C. § 1691a(f). The remedial provisions of the ECOA create a private right of action in the right of an “aggrieved applicant” against a creditor who, by reason of its failure to comply with any requirement imposed by the statute, including the prohibitions against discriminatory lending practices, shall be liable to the aggrieved applicant for any actual damages sustained, as well as attorneys’ fees, costs, and punitive damages of up to \$10,000. 15 U.S.C. § 1691e(a)-(d).

In fashioning the statute, Congress also declared that the agency charged with overseeing the ECOA – initially, the Board of Governors of the Federal Reserve System, and subsequently, the Consumer Financial Protection Bureau – must create regulations to carry out the statutory purpose of curbing credit discrimination. To such end, the Federal Reserve Board (“FRB”) promulgated Regulation B, the stated goal of which mirrors the purpose of the ECOA: “to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract).” 12 C.F.R. § 202.1(a).

To further the specific aim of preventing discrimination on the basis of marital status, the FRB included in Regulation B a provision sometimes referred to as the “spouse-guarantor rule.” Specifically, the “spouse-guarantor rule” provides that “a creditor shall not require the signature of an applicant’s spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor’s standards of creditworthiness for the

amount and terms of the credit requested.” 12 C.F.R. § 202.7(d). The rule is not absolute, however, as it expressly includes several exceptions. For example, if the loan applicant requests secured credit, the lender may require the co-signature or guaranty of the applicant’s spouse if it would be necessary, under applicable state law, to subject the property offered as collateral to satisfaction of the debt in the event of default. 12 C.F.R. § 202.7(d)(4).

It must also be noted that Regulation B provides its own definition of “applicant,” which on its face is readily at odds with the ECOA’s definition of that term in one rather conspicuous aspect. Per Regulation B, an “applicant” includes “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.*” 12 C.F.R. § 202.2(e) (emphasis supplied); *see also* 12 C.F.R. § 1002.2(e). Indeed, the rule further states that “[f]or purposes of § 202.7(d), the term includes guarantors, sureties, endorsers, and similar parties.” 12 C.F.R. § 202.2(e).

ii. Application of the ECOA and Regulation B to the Instant Case

With the statutory and regulatory framework in mind, we turn to the case before us and consider the parties’ arguments concerning the propriety of summary judgment. Metropolis contends it is entitled to judgment as a matter of law on both counterclaims. Metropolis argues that Stonefield’s counterclaim must fail as a matter of law because, aside from an alleged lack of evidence to support a finding of marital status discrimination, Metropolis could not have discriminated against Stonefield on that basis because Stonefield is an unincorporated entity incapable of possessing a marital status.

In their opposition to summary judgment, the Defendants contend that Metropolis’s reading of the ECOA is impermissibly narrow. They point to the fact that the ECOA defines “person,” a term nested within the statutory definition of “applicant,” to include “a corporation . . . partnership, cooperative, or association.” 15 U.S.C. § 1691a(f). As such, the Defendants assert that Stonefield clearly qualifies as an “applicant,” and indeed, Metropolis does not appear to take issue with this conclusion. The parties diverge, however, on the question of whether an “applicant” that is not a natural person, such as Stonefield, can be the subject of discriminatory lending practices on the basis of traits arguably reserved to a natural person, like race, religion, or marital status.

The Defendants argue the Court must read the ECOA's definition of "applicant" in context with the definition of "person" and the statutory prohibitions against protected class discrimination. Per the Defendants, if Metropolis's view is correct, then Congress's decision to include entities other than natural persons within the ECOA's definition of the word "applicant" would be utterly superfluous, because no business entity applying directly to a lender for credit would ever be able to make an ECOA discrimination claim. The Defendants conclude that interpreting the statute in such a manner will vitiate Congress's clear intent to permit small businesses to bring a discrimination claim in their own right when lenders discriminate against the principal(s) of the business on the basis of a protected status enjoyed by the principal(s).

We think Stonefield's claim here must fail as a matter of law because we cannot accept that a company, especially one with multiple owners, is capable of possessing vicariously the marital status of one of its principals. Familiar though it has become in this country to be "married" to one's job, it would nevertheless be absurd to entertain the notion that a limited liability company can, in and of itself, be married to a natural person. Only slightly less troubling is the idea that an entity other than a natural person could have the demographic characteristics of one or more of its principals imputed to it for purposes of stating a claim for discrimination. After all, what is to be said of a corporation, even if closely held, whose stock is owned in uneven amounts by five or ten shareholders? Could it be that such a company could simultaneously be married, unmarried, Asian-American, French Canadian, Russian, Christian, Jewish, and atheist, all at once? True, this is not the circumstance with which we are faced, and it could perhaps be that in the case of a sole proprietorship or a single-member limited liability company, a colorable claim could be made on the basis of discrimination with respect to a protected status enjoyed by the sole owner. In such instance, it would be logically more palatable to disregard the corporate identity of the credit "applicant," notwithstanding the practical problems such an interpretation would conceivably raise in the commercial lending industry. Regardless, the issue of whether an entity owned by only one person can state a claim for discrimination under the ECOA based on that person's demographic characteristics is also not question with which we are presented.

Here it would seem too tenuous to conclude, as the Defendants urge us to do, that Stonefield – a company owned equally by two individuals –

vicariously possesses the marital status of only one of its owners, Ms. Stone. Indeed, the company's other 50% owner, Ms. Field, has at all relevant times has been a single woman. On the facts before us, we hold that Stonefield's counterclaim for violation of the ECOA must fail, and Metropolis is entitled to judgment as a matter of law on such claim.

It remains then for the Court to consider Metropolis's request for summary judgment on Mr. Stone's counterclaim. Here, Metropolis contends Mr. Stone's claim must fail because Mr. Stone was not an "applicant," as defined by the ECOA, and thus lacks standing to sue for alleged lender discrimination. For his part, Mr. Stone responds that he qualifies as an "applicant" pursuant to the express language of 12 C.F.R § 202.2(e), and thus possesses standing. Accordingly, the issue for the Court's determination is whether we should defer to the Regulation B definition of "applicant." Our independent review of pertinent authorities reveals that this issue remains undecided in the Fifteenth Circuit, and neither the bank nor the defendants have pointed us to any binding precedent.

As noted above, Congress expressly granted the FRB rulemaking authority to carry out the statute's purpose, and Regulation B's definition of "applicant" expressly includes guarantors among its class of protected persons. *See* 15 U.S.C. § 1691b; 12 C.F.R. § 202.2(e). When called upon to review a federal agency's construction of the statute it administers, we must engage in the two-step inquiry originally set forth in *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

In the first instance, the rule of *Chevron* requires us to consider whether Congress directly addressed the precise question at issue. *Id.* at 842. If we answer this inquiry in the affirmative, then the issue ends where it began, and the Court is duty bound to give effect to the manifest intent of Congress according to the plain language of the statute. *Id.* If, however, we determine that Congress has not directly addressed the precise question before us, then we must consider whether the answer supplied by the agency is based on a permissible construction of the statute. *Id.*; *see also Hawkins v. Cmty. Bank of Raymore*, 761 F.3d 937, 941 (8th Cir. 2014); *RL BB Acquisition, LLC v. Bridgemill Commons Dev. Group, LLC*, 754 F.3d 380, 384 (6th Cir. 2014). In this secondary inquiry, we are not required to find that the agency's construction was the only permissible interpretation, or even that we would have interpreted the statute in the same manner, so long as we find that the regulators reached a

permissible construction entitled to deference. *See RL BB Acquisition*, 754 F.3d at 385; *see also Moran Foods, Inc. v. Mid-Atl. Mkt. Dev. Co., LLC*, 476 F.3d 436, 441 (7th Cir. 2007) (noting that district courts should defer to administrative interpretations of statutes when a statute is ambiguous).

Mr. Stone urges us to adopt the rationale of the Sixth Circuit in *RL BB Acquisition*. 754 F.3d 380. In that case, the appellate court concluded that the ECOA's definition of "applicant" was ambiguous and broad enough to conceivably include guarantors within the statutorily protected class. As such, the court found that the FRB's definition of "applicant" was based on a permissible construction of the statute entitled to deference under the rule of *Chevron*. *See id.* at 385-86.

Metropolis, on the other hand, asks us to side with the Seventh and Eighth Circuits, both of which have decided the issue contrary to the Sixth Circuit. In *Moran Foods*, the Seventh Circuit held that "there is nothing ambiguous about 'applicant' and no way to confuse an applicant with a guarantor." 476 F.3d at 441. The *Moran* court was also concerned with the prospect of opening the floodgates to "vistas of liability that the Congress that enacted [the ECOA] would have been unlikely to accept," referring to the possibility that a guaranty could be found unenforceable for a violation of the ECOA, and the creditor might thereby lose the entire debt. *Id.* More recently, in *Hawkins*, the Eighth Circuit, citing both *RL BB Acquisition* and *Moran Foods*, determined that "the plain language of the ECOA unmistakably provides that a person is an applicant only if she requests credit. . . . [b]ut a person does not, by executing a guaranty, request credit." 761 F.3d at 941.

Notably, the schism among the Circuit Courts of Appeal that have addressed this issue was nearly resolved not long ago, when the United States Supreme Court granted certiorari to review the Eighth Circuit's decision in *Hawkins*. However, with the passing of the Honorable Justice Antonin Scalia, the case went before a Court of only eight Justices, and the judgment of the Eighth Circuit was ultimately affirmed *per curiam* by an equally divided Supreme Court. *Hawkins v. Cmty. Bank of Raymore*, 136 S. Ct. 1072 (2016), *reh'g denied*, 136 S. Ct. 2534 (2016). The precedential effect of this development was to leave the Circuit split intact for the time being, and in the absence of any precedent that is binding upon this Court, we address the issue in turn.

In our view, we need not reach the second step of *Chevron*, because we agree with the Seventh and Eighth Circuits that the ECOA definition of “applicant” is unambiguous. Had Congress wished to include guarantors in the class of persons whom it endowed with a private right of action under the ECOA, it could easily have done so.

Our decision is buttressed by our consideration of the statutory history and purpose of the ECOA vis-à-vis the claims at issue in this case. As a federal antidiscrimination statute, the ECOA was designed to eradicate discriminatory lending practices that shut out certain persons from accessing credit based on one or more of the Title VII protected statuses. In other words, the evil Congress sought to remedy in enacting the ECOA was the discriminatory *denial* of credit to otherwise creditworthy applicants based on naught but their race, gender, age, marital status, or religious creed. It would seem a bridge too far to imagine that Congress envisioned or intended to provide such protections to someone, like Mr. Stone, who was not in fact *denied* credit at all. Indeed, Mr. Stone claims he was wrongfully *included* in the credit application process, not excluded from it. We do not think the ECOA can be stretched so far as to encompass such claims.

III. CONCLUSION

Metropolis’s Motion for Summary Judgment (Dkt. 138) is granted. Metropolis is entitled to judgment on all counts of its Verified Complaint (Dkt. 1), and for the reasons set forth above, the Defendants’ counterclaims are also dismissed with prejudice.

It is so ordered.

IN THE UNITED STATES COURT OF APPEALS FOR THE
FIFTEENTH CIRCUIT

METROPOLIS BANK, *Plaintiff/Counter-Defendant*,

v.

STONEFIELD BAKERY, LLC;
JANET A. STONE;
JONATHAN H. STONE; and
MARY L. FIELD, *Defendants/Counter-Plaintiffs*.

Before: NOVIS, PRAETER, and DISSENSIO, Circuit Judges.

PER CURIAM.

The judgment of the United States District Court for the Eastern District of Avalon is reversed.

This case presents two issues: (1) Can a credit applicant that is not a natural person state a claim for violation of the Equal Credit Opportunity Act (the “ECOA”) based on marital discrimination allegedly suborned by one of its several principals? (2) Does an individual loan guarantor possess standing to sue for violation of the ECOA?

Judges NOVIS and PRAETER conclude that both issues should be answered in the affirmative, and therefore vote to reverse the judgment of the district court.

Judge DISSENSIO concludes that both issues should be answered in the negative, and therefore votes to affirm the district court’s judgment in all respects.

All members of the panel have written separate opinions explaining their reasoning.

It is so ordered.

NOVIS, Circuit Judge.

As to the first issue on appeal, the district court erred in granting judgment as a matter of law in favor of Metropolis Bank and against Stonefield Bakery because the ECOA plainly contemplates that a small business, such as Stonefield, may bring an action for discrimination in a credit transaction where it appears the lender discriminated against the corporate applicant based on one or more of the protected statuses enjoyed by the principal who submitted the application. As to the second issue on appeal, the district court's judgment must likewise be reversed, because the ECOA's definition of "applicant" is not only ambiguous, but also broad enough to include a personal guarantor, and the Federal Reserve Board's interpretation of the statute via Regulation B represents a permissible construction entitled to *Chevron* deference.

In the first instance, the ECOA defines "applicant" to mean "*any person* who applies to a creditor directly for an extension, renewal, or continuation of credit" 15 U.S.C. § 1691a(b) (emphasis added). It also expressly provides that a "person" includes various corporate and unincorporated entities.¹ 15 U.S.C. § 1691a(f). The district court recognized as much, though it struggled with the notion that a limited liability company could be the subject of discrimination on one of the bases traditionally reserved to natural persons. But the statute is not so narrow.

In the Court's view, the phrase "any person" found in the ECOA definition of "applicant," particularly when read in context with the statute's companion definition of "person," can conceivably encompass more than one person. This includes both natural persons and corporate or unincorporated entities. In the context of a small business loan application, we think this is the most logical interpretation of the ECOA.

After all, it is well settled that corporate entities possess many of the same freedoms enjoyed by natural persons, such as the freedom to contract and the freedom to own property. By the same token, companies may be held liable for their debts separate and apart from any liability of their owners, and indeed, it is the limitation of liability created by the additional layer of the corporate fiction that enables much of modern commerce to occur at all.

¹ The ECOA does not list limited liability companies among the various types of corporate and unincorporated entities that may qualify as "applicants" for purposes of asserting claims for violation of the statute, but no party has contended on appeal that an LLC should be treated any differently than a corporation or partnership for such purposes, and we see no reason to decide otherwise.

Nevertheless, companies can act only by and through the natural individuals that comprise their ranks.

A loan application made in the name of a small business is no exception. While the lender will invariably insist that the application bear the name of whomever will serve the role of the prospective principal borrower, if the borrower is a business, the signature of at least one authorized representative of the business will inevitably be required, not because there is any confusion as to who will be principally obligated on the loan (to be sure, the company will be), but because the company does not, as a practical matter, have a hand with which to pick up the pen. As such, we hold that in the context of a commercial loan application, both the company in whose name the application is made and any authorized representative of the company that “applies to [the lender] directly for an extension, renewal, or continuation of credit” – in this case, Stonefield Bakery and Ms. Stone – may qualify as “applicants” for purposes of maintaining a claim for violation of the ECOA.

For several reasons, reversal is also required on the issue of whether a guarantor possesses standing to assert an affirmative claim for violation of the ECOA. First, we do not agree with the district court that the statutory definition of “applicant” is so clear cut as to be unsusceptible to a meaning that encompasses guarantors. As we must give the words used by Congress their ordinary and customary meaning, we consider what Congress meant when it defined “applicants” in terms of those who “appl[y]” for “credit.” As the Sixth Circuit discussed in *RL BB Acquisition*, the common meaning of “apply” is “to make an appeal or request, esp. formally and often in writing and usually for something of benefit to oneself.” *RL BB Acquisition, LLC v. Bridgemill Commons Dev. Group, LLC*, 754 F.3d 380, 385 (6th Cir. 2014) (citing Webster's Third New Int'l Dictionary 105 (1993)). As for the term “credit,” the ECOA supplies the definition, which is “the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.” 15 U.S.C. § 1691a(d).

Parsing these terms, the ambiguity of the ECOA’s definition of applicant becomes increasingly apparent. It is undoubtedly true that the person anticipated to be the principal borrower of a loan, when she approaches the lender directly to request money in exchange for deferred repayment of such debt with interest, makes the application for her own benefit. But this does not

preclude the possibility that a guarantor, when he approaches the lender seeking an extension of credit to *principally* benefit the borrower, does not also obtain some benefit for himself. After all, the guarantor's offer is not gratuitous, but made in consideration for credit he desires the lender to extend to the borrower. See *RL BB Acquisition*, 754 F.3d at 385. Stated differently, if his guaranty, along with whatever other collateral may be offered as security by him or some other party to the lending transaction, induces the lender to make the loan, then the guarantor receives precisely the benefit he hoped to gain from his bargain. Thus, it cannot be gainsaid that the phrase "any person who applies to a creditor directly for . . . credit" could conceivably include a guarantor.

In the face of this ambiguity, we think the district court should have deferred to the FRB's reasonable interpretation of "applicant" as reflected in § 202.2(e) of Regulation B. We also find it persuasive that despite several rounds of amendment² to the ECOA since the FRB included guarantors in its definition of "applicant," Congress has not seen fit to correct the FRB's course by clarifying the statutory definition. If Congress wishes to countermand the FRB's interpretation of the statute, it need only say the word, but it has not done so.

I would reverse the district court, which should have denied summary judgment as to both counterclaims.

PRAETER, Circuit Judge, *concurring in the judgment*.

I agree with Judge NOVIS that the district court's decision must be reversed and concur fully in his rationale. I write separately to emphasize that that statutory history of the ECOA firmly supports the Court's decision today with respect to both issues on appeal.

As to the first issue, I would find that the ability of a corporate or unincorporated entity to maintain a claim for violation of the ECOA based on discrimination against one of the company's principals is not only in accord with the plain language of the statute, but also precisely what Congress had in mind when it authored the statute. I base this conclusion not only upon the fact that the ECOA defines "applicant" to include corporations and other

² Including an extensive amendment made after the Seventh Circuit's decision in *Moran Foods*.

entities that are not natural individuals, but also on the report of the Senate Committee on Banking, Housing and Urban Affairs, issued on January 21, 1976, in which the Senate reported favorably upon the first round of amendments to the ECOA statute and recommended that bill as amended should pass. *See* S. REP. 94-589, 10-11, 1976 U.S.C.C.A.N. 403.

As is pertinent to this discussion, the report states:

The present Equal Credit Opportunity Act prohibits discrimination in any type of credit transaction, including all forms of business credit, on the basis of sex or marital status. Final regulations implementing that Act were issued by the Federal Reserve Board on October 16, 1975, and came into effect on October 28, 1975. The regulations make certain “adjustments and exceptions” with respect to the treatment of different classes of business credit transactions, as authorized under section 703 of the Act.

The Committee considered an amendment to section 703 authorizing the Board, in prescribing regulations, to exempt from any of the provisions of the Act “any class of transactions not primarily for personal, family or household purposes.” This language, added onto the authority already provided in existing law, could have been interpreted as mandating a broad exemption of business credit transactions from the coverage of the Act.

In order to clarify the intent, the Committee approved an amended version of the proposed language which authorizes exemptions from “one or more” of the provisions of the Act, but only “if the Board makes an express finding that the application of such provision or provision would not contribute substantially to carrying out the purposes of this title.” The purpose of the amendment is to narrow the scope of the exemption authority granted to the Board and to make it clear that Congress does not intend to deny the antidiscrimination protections of the Act to minorities,

women and others who encounter problems of discrimination in obtaining credit to establish businesses or conduct normal business operations.

S. REP. 94-589, 10-11, 1976 U.S.C.C.A.N. 403, 412. In short, it appears Congress specifically considered *and rejected* a wholesale exemption for commercial loan transactions from the antidiscrimination protections of the ECOA and specifically envisioned that the law's protections would extend to people like Mss. Stone and Field.

As to the second issue on appeal, I fully concur with Judge NOVIS and would add only that *Hawkins, Moran Foods, and RL BB Acquisition* are far from the only cases addressing a guarantor spouse's standing to maintain a claim for violation of the ECOA. See, e.g., *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 30–331 (3d Cir. 1995) (accepting the Federal Reserve Board's definition of “applicant”); *Empire Bank v. Dumond*, No. 13-CV-0388-CVE-PJC, 2013 WL 6238605, at *6 (N.D. Okla. Dec. 3, 2013) (surveying cases and discussing that *Moran Foods* appears to reflect the minority view); *Citgo Petroleum Corp.*, 08–CV–654–TCK–PJC, 2010 WL 3931496, at *9 (declining to follow *Moran Foods* and adhering to Regulation B); *F.D.I.C. v. Medmark, Inc.*, 897 F. Supp. 511, 514 (D. Kan. 1995) (concluding a guarantor may assert an alleged ECOA violation defensively); *Bank of the West v. Kline*, 782 N.W.2d 453, 458 (Iowa 2010) (holding that guarantors are “applicants” under the ECOA); *Eure v. Jefferson Nat'l Bank*, 448 S.E.2d 417, 417–18, 421 (Va. 1994) (determining that requiring a spousal guaranty in violation of Regulation B is a violation of the ECOA); *W. Star Fin., Inc. v. White*, 7 P.3d 502, 505–06 (Okla. Civ. App. 2000) (allowing the claim of a spousal guarantor that her rights under the ECOA were violated to proceed to trial); see also *Mayes v. Chrysler Credit Corp.*, 167 F.3d 675, 677 (1st Cir. 1999) (“The paradigm case is the spouse who is wrongly made to . . . guarantee a debt but may be unconscious of the violation . . .”). The Court today joins the majority of courts who have rejected the notion that guarantors may not avail themselves of the statute's broad protections.

DISSENSIO, Circuit Judge, *dissenting*.

This Court's decision today represents nothing short of an acrobatic attempt to manufacture ambiguities where none exist in order to avoid applying a plain statute in accordance with its ordinary meaning. It is not for us to rewrite Congress's mandate, regardless of whether we may feel that doing so will advance the salutary goals of the ECOA. The district court correctly determined both of the issues now before us, and I would affirm its judgment in all respects.

On the first issue, I cannot agree with my colleagues that Stonefield possessed standing to make a claim for marital status discrimination merely because Ms. Stone, as the person physically filling out and submitting the application to the bank, is married. The majority neglects to recognize that, as a practical matter, Metropolis would not have processed the loan application any differently had Ms. Field been the one to physically fill out and submit the application. Nor would the bank's credit decision have been any different because, as the record reflects, there was no dispute as to the fact that Stonefield was not independently creditworthy for the loan amount requested, and the district court found that the guaranties of Mss. Stone and Field were not enough to meet the bank's credit and underwriting guidelines. Simply put, the bank required more security than the "applicant" – whether that was Stonefield, Ms. Stone, Ms. Field, or one or more any of the foregoing in combination – was able to provide without offering a *further* guaranty or some other collateral.

But even if the guaranties of Mss. Stone and Field had been sufficient, an entity cannot possess a marital status, so Stonefield lacks standing to state a claim for marital status discrimination. Moreover, I am unpersuaded by the rationale that would attribute to an entity – clearly the "applicant" for purposes of a commercial credit application – the individual characteristics of the entity's principal(s) or other natural person(s) who submit the application paperwork, or at least play some part in completing it. As discussed further below, the plain wording of the ECOA evinces the intent of Congress to equate "applicant" with the person or entity who will become the principal loan borrower if the credit application is accepted. This is particularly true when one reads the term "applicant" (used several dozen times in the statutory text) in context.

On the second issue, the record before the Court reflects that Metropolis did not violate the so-called “spouse-guarantor rule” by accepting (or even directly requesting) the guaranty of Mr. Stone. It bears emphasis that this rule does not prohibit a lender from ever seeking or accepting the guaranty of a loan applicant’s spouse under any circumstances. Rather, the rule states that a creditor “shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument *if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested.*” 12 C.F.R. § 202.7(d)(1) (emphasis supplied). In the face of uncontroverted evidence that the applicant or applicants, as the case may be, did not meet the bank’s credit standards without additional security or collateral, the “spouse-guarantor rule” does not even come into play. The district court was correct to grant summary judgment for the bank on this issue.

Again, however, even if the cumulative creditworthiness of Stonefield, Ms. Stone, and Ms. Field has been sufficient, I think a plain reading of the ECOA requires a different result than the Court today reaches. I would respectfully direct my colleagues to the several portions of the ECOA that provide context for the correct interpretation of the term “applicant.” In addition to the plain meaning canon of statutory construction, we should also read statutes so as to give full effect to every word Congress chooses to use, to the greatest extent possible, avoiding constructions that might render some portions of a statute superfluous or flatly incongruous with the other parts. There are several textual incongruities that result from the majority’s expansive interpretation of “applicant.” These would be remedied if the Court were to apply the plain meaning of the term.

For example, the ECOA provides that within 30 days of receiving a completed credit application, a creditor “shall notify *the applicant* of its action on the application.” 15 U.S.C. § 1691(d)(1) (emphasis supplied). Here, the use of the definite article confirms Congress meant for “the applicant” to refer to the person or entity that might become a principal borrower of a loan or, alternatively, be rejected. Common industry practice in commercial lending is in accord with this construction and does not entail sending notice to a putative guarantor of action on a loan application, unless the guarantor in question also happens to be the person submitting the application as the authorized representative of the business. Still, such notice is directed to the business – i.e., the applicant for the loan.

As another example, the ECOA takes care to establish that “adverse action” does not include “a refusal to extend additional credit under an existing credit arrangement where *the applicant is delinquent or otherwise in default*” 15 U.S.C. § 1691(d)(6). Here again, it requires a concerted effort to ignore the statute’s purposeful use of the singular article, as the ECOA clearly equates “the applicant” with the *borrower*. In order for “the applicant” to be “delinquent or otherwise in default,” the applicant must have already borrowed money and failed to repay it or otherwise breached some material term of the loan agreement. A guarantor does not borrow the debt he guaranties, and his obligation to repay the loan is normally not triggered in the absence of a prior default by the principal borrower. There is simply no way to confuse a borrower with a guarantor.

Because I conclude that the statutory definition of “applicant” is plain and unambiguous, particularly when properly considered in context with the numerous other instances of the term used throughout the ECOA, I would affirm the district court’s judgment in all respects.

SUPREME COURT OF THE UNITED STATES

METROPOLIS BANK, *Petitioner*

v.

STONEFIELD BAKERY, *et al.*, *Respondents*

The petition for a writ of certiorari is granted, limited to the following questions:

1. Can a credit applicant that is a corporate or unincorporated entity state a claim for violation of the ECOA, where a creditor allegedly discriminates against the natural person submitting the loan application on the basis of his or her marital status, and such person is an owner of the entity?
2. Is a personal guarantor of a loan an “applicant” with standing to assert a cause of action for violation of the ECOA?