No. _____

In The
Supreme Court of the United States

VALERIE J. HAWKINS, and
JANICE A. PATTERSON,

Petitioners,

v.

COMMUNITY BANK OF RAYMORE,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

JAY T. SHADWICK
Counsel of Record
DUGGAN SHADWICK DOERR & KURLBAUM LLC
11040 Oakmont
Overland Park, Kansas 66210
(913) 498-3536
(913) 498-3538 (facsimile)
jshadwick@kc-dsdlaw.com

Attorneys for Petitioners Valerie J. Hawkins and Janice A. Patterson

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

Community Bank of Raymore[1] sued housewife Valerie Hawkins for over $2 million claiming Ms. Hawkins owed the money under an absolute, unconditional guaranty regardless of whether CBR sued PHC Development, LLC,[2] the named borrower, or Gary Hawkins, one of PHC's owners. Stated another way, CBR claimed Ms. Hawkins agreed to repay the loans regardless of whether CBR pursued her husband, PHC, or any collateral. CBR claims Ms. Hawkins is "primarily and unconditionally liable" under the agreement she signed. Ms. Hawkins, like Ms. Patterson, was not a member, officer, or otherwise interested in PHC.

Petitioners claim that CBR engaged in marital status discrimination under the Equal Credit Opportunity Act ("ECOA") by requiring their guaranties. The Sixth Circuit recently agreed that spousal guarantors have standing as "applicants" to assert ECOA violations. The Eighth Circuit disagreed with the Sixth Circuit, deciding that ECOA "applicants" unambiguously excludes guarantors. The Eighth Circuit ruling contradicts state courts of last resort in Alaska, Iowa, Missouri, and Virginia. Indeed, spousal guarantors in Iowa or Missouri state courts are afforded protection by the ECOA, but not in federal district courts in Iowa or Missouri.

---

[1] Hereinafter referred to as CBR.

[2] Hereinafter referred to as PHC.

QUESTIONS PRESENTED – Continued

The Eighth Circuit's decision raises the following issues not yet decided by this Court:

1. Are "primarily and unconditionally liable" spousal guarantors unambiguously excluded from being ECOA "applicants" because they are not integrally part of "any aspect of a credit transaction"?

2. Did the Federal Reserve Board have authority under the ECOA to include by regulation spousal guarantors as "applicants" to further the purposes of eliminating discrimination against married women?

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Eighth Circuit Court of Appeals' opinion in *Hawkins, et al. v. Community Bank of Raymore* is reported at 761 F.3d 937 (8th Cir. 2014).

JURISDICTION

Review of the United States Court of Appeals for the Eighth Circuit's August 5, 2014, opinion is requested. Jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1254(1).[3]

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

[3] All references to the United States Code are to the 2014 Code unless expressly otherwise noted.

STATEMENT OF THE CASE

Petitioners challenge the Eighth Circuit's conclusion that Valerie Hawkins and Janice Patterson lack standing as spousal guarantors under the Equal Credit Opportunity Act ("ECOA"). The Eighth Circuit decided the ECOA's definition of "applicant" unambiguously excludes the Petitioners as "primarily and unconditionally liable" spousal guarantors because they were not deemed an integral part of "any aspect of a credit transaction." The Eighth Circuit refused to defer to the Federal Reserve Board's ("FRB") interpretation of "applicant" under 15 U.S.C. § 1691a(b) and the FRB's inclusion of spousal guarantors as "applicants" under Regulation B which prohibits automatically requiring a wife sign a guaranty for her husband's business. The Eighth Circuit's decision directly conflicts with the Sixth Circuit's decision that "applicant" correctly includes spousal guarantors. The Eighth Circuit's ruling also conflicts with decisions by state courts of last resort in Alaska (*Still v. Cunningham*, 94 P.3d 1104 (Alaska 2004)); Iowa (*Bank of the West v. Kline*, 782 N.W.2d 453 (Iowa 2010)); Missouri (*Boone Nat. Sav. & Loan Ass'n v. Crouch*, 47 S.W.3d 371 (Mo. 2001)); and Virginia (*Eure v. Jefferson National Bank*, 448 S.E.245 (Va. 1994)). Review is necessary to resolve splits in authority regarding an important federal matter.

CBR loaned $2,077,900 to develop a residential subdivision owned by PHC in Peculiar, Missouri (the "Loans"). Gary Hawkins (individually) and Chris Patterson (as trustee for the Chris L. Patterson and

Janice A. Patterson Living Trust dated June 14, 2000) are PHC's member-owners. CBR required Petitioners Valerie Hawkins and Janice Patterson (collectively the "Wives" or "Petitioners") to sign sixteen "unconditional and absolute" guaranties over five years purportedly agreeing to repay the Loans (the "Guaranties"). Simply put, CBR claims they can sue and collect the full amount of the Loans from the Wives without ever pursuing Gary Hawkins, Chris Patterson, PHC, or the collateral. CBR sued the Wives to do just that – collect the Loans from the Wives before collecting from Gary Hawkins, Chris Patterson, PHC, or the collateral.

The Guaranties state that:

> Lender can enforce this Guaranty against Guarantor even when Lender has not exhausted Lender's remedies against anyone else obligated to pay the Indebtedness or against any collateral securing the Indebtedness, this Guaranty or any other guaranty of the Indebtedness.

The Guaranties further state that:

> Guarantor's Share of the Indebtedness will only be reduced by sums actually paid by Guarantor under this Guaranty, but will not be reduced by sums from any other source including, but not limited to, sums realized from any collateral securing the Indebtedness or this Guaranty, or payments by anyone other than Guarantor.

The Wives asserted federal question jurisdiction under 28 U.S.C. § 1331, claiming that CBR violated the ECOA and Regulation B based on marital status by requiring the Guaranties. CBR's Counterclaim and Amended Counterclaim invoked supplemental jurisdiction under 28 U.S.C. § 1367(a), claiming the right to collect the Guaranties. CBR sought summary judgment on Petitioners' ECOA claim and affirmative defense.

The District Court concluded that Petitioners were not ECOA "applicants" and had no standing (the "ECOA Order"). The District Court then discontinued exercise of supplemental jurisdiction dismissing CBR's Counterclaims without prejudice under 28 U.S.C. § 1367(c) on August 30, 2013. The District Court entered Judgment on September 6, 2013, and an Amended Judgment on September 10, 2013. Petitioners timely filed their notice of appeal on September 13, 2013. The Eighth Circuit heard oral argument on April 17, 2014, and issued its Opinion on August 5, 2014.

The question for this Court is whether "primarily and unconditionally" liable spousal guarantors are "applicants" for "any aspect of a credit transaction" under the ECOA. Alternatively, are such persons unambiguously excluded from being "applicants" as determined by the Eighth Circuit? The Alaska, Iowa, Missouri, and Virginia Supreme Court's and the Sixth

Circuit's decisions are antithetical to the Eighth Circuit's conclusion.

REASONS FOR GRANTING THE PETITION

I. The Sixth and Eighth Circuit expressly disagree whether ECOA "applicants" for "any aspect of a credit transaction" unambiguously excludes spousal guarantors. This split casts doubt on the validity of regulations which have included spousal guarantors as "applicants" for decades. Review is necessary to resolve the circuit split on this important matter concerning a significant federal statute with far-reaching implications for lenders, future credit applicants, and lender-required spousal guarantors.

The Eighth Circuit's decision directly conflicts with the Sixth Circuit's prior decision on the same important issue: Whether "applicants" for "any aspect of a credit transaction" under the ECOA unambiguously excludes spousal guarantors such that guarantors have no standing under the ECOA. *See* S. Ct. R. 10 (providing that the Court, when considering review on a writ of certiorari, considers whether "a United States court of appeals has entered a decision in conflict with a decision of another United States court of appeals on the same important matter.").

The ECOA states "it shall be unlawful for any creditor to discriminate against any applicant, with

respect to any aspect of a credit transaction – (1) on the basis of . . . sex or marital status." 15 U.S.C. § 1691(a)(1). The ECOA's purpose is "to eradicate credit discrimination waged against women, especially married women." *Mays v. Buckeye Rural Elec. Coop.*, 277 F.3d 873, 876 (6th Cir. 2002). Only "aggrieved applicants" are afforded standing to sue for ECOA violations. *See* 15 U.S.C. § 1691e. The ECOA defines applicant 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).

Using broad statutory authority under the ECOA (*see* 15 U.S.C. § 1691b(a)), the FRB[4] implemented Regulation B in 1974. Regulation B states, in part, that "[a] creditor shall not require the signature of an applicant's spouse or other person . . . on a 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). Regulation B further states that if an additional party is necessary to support the credit

[4] The 2010 amendments to the ECOA vested the authority to promulgate regulations under the statute to the Consumer Financial Protection Bureau.

requested "[t]he applicant's spouse may serve as an additional party, but the creditor shall not require that the spouse be the additional party." 12 C.F.R. § 202.7(d)(5).

Regulation B originally excluded guarantors from ECOA protection. In 1985, however, the FRB amended Regulation B to include guarantors as "applicants" affording spousal guarantors who were unlawfully required to sign guaranties standing to seek legal remedies. *See* 12 C.F.R. § 202.2(e); 50 Fed. Reg. 48,020 (1985) (official staff commentary).

The Sixth and Eighth Circuits disagree whether the FRB exceeded its authority. *Compare RL BB Acquisition, LLC v. Bridgemill Commons Dev. Grp., LLC*, 754 F.3d 380, 385-86 (6th Cir. 2014); *Hawkins v. Community Bank of Raymore*, 761 F.3d 937, 940-43 (8th Cir. 2014).

In *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778 (1984), this Court determined a two-step analysis applies to whether deference is afforded to regulators. Step one requires analysis of whether "Congress has directly spoken to the precise question at issue." *Chevron*, 467 U.S. at 842-43. The Court must find "clear congressional intent" contrary to an agency's interpretation prior to invalidating the federal regulation. *Ragsdale v. Wolverine Worldwide, Inc.*, 218

F.3d 933, 936 (8th Cir. 2000).[5] The Sixth Circuit deemed the ECOA's definition of "applicant" broad without directly speaking to the precise question concerning a spousal guarantor's status as an "applicant." *See RL BB Acquisition*, 754 F.3d at 385-86. Conversely, the Eighth Circuit found that Congress intended "applicant" to unambiguously exclude guarantors. *See Hawkins*, 761 F.3d at 940-43.

The United States Supreme Court should resolve the circuit split on this important matter. *See* Sup. Ct. R. 10(a).

A. The Sixth Circuit determined that the ECOA left the precise question of whether a spousal guarantor could be an "applicant" unanswered. The Sixth Circuit deferred to regulators who filled that gap by concluding that spousal guarantors are "applicants" in an effort to further the purposes of the ECOA.

The Sixth Circuit concluded that the ECOA's definition of "applicant" is not straightforward, and is "easily broad enough to capture a guarantor." *RL BB Acquisition*, 754 F.3d at 386. The Sixth Circuit cited Webster's Dictionary's definition of "applies," which is

[5] The court only analyzes the second step if the statute does not answer the precise issue presented. *Chevron*, 467 U.S. at 843. In the second step, the Court must determine whether the regulation "is based on a permissible construction of the statute." *Id.*

"to make an appeal or request esp. formally and often in writing and usu. for something of benefit to oneself." *Id.* at 385. While a guarantor does not "traditionally" approach a creditor for credit, a guarantor does "formally approach" the creditor by offering personal liability. *Id.* The guarantor signs in consideration of the borrower receiving credit – not gratuitously. *Id.* While "applicant" could be narrowly construed to include only the business entity making the *initial* approach, the Sixth Circuit recognized "applicant" *could* broadly encompass "all those who offer promises in support of an application – including guarantors." *Id.*

The Sixth Circuit further analyzed the ECOA's definition of "credit" as "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 thereof." *Id.* This definition "makes clear" that "an 'applicant' requests credit, but a 'debtor' reaps the benefit." *Id.* Since the "applicant" and the "debtor" are not always one in the same, it "would be reasonable to conclude that the applicant could be a third party, such as a guarantor." *Id.* The Sixth Circuit found "no reason to artificially limit the possible meanings of 'applicant'" considering the ECOA prohibits discrimination "with respect to *any aspect* of a credit transaction" and has "broad remedial goals." *Id.* (emphasis in original). The Sixth Circuit determined that Congress has not precisely addressed whether an "applicant" excludes a guarantor. *Id.*

The Sixth Circuit's step two reviewed whether Regulation B's inclusion of guarantors as applicants "is based on a permissible construction of the statute." *Id.* at 385-86. The court determined that "'at least one of the natural meanings' of applicant includes guarantors," therefore the FRB's definition is permissible and entitled deference. *Id.* Rather than allowing guarantors unlimited standing to assert ECOA violations, the FRB restrained the definition of "applicant" as including guarantors who were wrongly required to sign on behalf of their spouses under § 202.7(d). *Id.* at 386. The FRB limited guarantors' ECOA protection cautiously because "unlimited inclusion of guarantors and similar parties in the definition might subject creditors to risk of liability for technical violations of various provisions of the regulation." *Id.* This "reasoned response" was not "arbitrary, capricious, or manifestly contrary to the statute," and is therefore entitled deference. *Id.*

B. The Eighth Circuit conversely concluded that Congress intended the ECOA's definition of "applicant" to unambiguously exclude guarantors.

Two months after the Sixth Circuit's decision, the Eighth Circuit disagreed with *RL BB Acquistion*. *See Hawkins v. Community Bank of Raymore*, 761 F.3d 937, 941 (8th Cir. 2014) (stating that the "Sixth Circuit recently reached the contrary conclusion, finding it ambiguous whether a guarantor qualifies as an applicant under the ECOA").

The Eighth Circuit decided that the ECOA's definition of applicant unambiguously excludes spousal guarantors. *Hawkins*, 761 F.3d at 940-43. Though a guarantor "desires for a lender to extend credit to a borrower," the Eighth Circuit concluded that a guarantor does not request credit or otherwise apply for credit by signing a guaranty. *Id.* at 941-43. The Eighth Circuit found that "***assuming a secondary, contingent liability*** does not amount to a request for credit" because a guarantor "engages in different conduct, receives different benefits, and ***exposes herself to different legal consequences than does a credit applicant***."[6] *Id.* at 943 (emphasis supplied). The Eighth Circuit implied that the Sixth Circuit "manufactured" statutory ambiguity to defeat Congress's

[6] In stating that guarantors incur only "secondary" and "contingent" liabilities, the Eighth Circuit ignored CBR's claims and the record on appeal. CBR claims the Wives' guaranties are "primary and absolute" liabilities, and that the lender may collect from guarantors without first pursuing the borrower or any collateral. Simply put, guarantors become primarily liable whether the lender chooses to collect against the "borrower" or not. Here, the Guaranties state that "Lender can enforce this Guaranty against Guarantor even when Lender has not exhausted Lender's remedies against anyone else obligated to pay the Indebtedness or against any collateral securing the Indebtedness, this Guaranty or any other guaranty of the Indebtedness."

CBR claimed that the Wives are "primarily and unconditionally" liable for the "Indebtedness." CBR pursued claims against the Wives asserting it may collect the entire debt from the Wives without ever pursuing their husbands, PHC, or the collateral.

unambiguous intent that "applicants" excludes guarantors. *Id.* at 941.

The Eighth Circuit cited with favor the Seventh Circuit's opinion in *Moran Foods, Inc. v. Mid-Atlantic Market Dev. Co.*, 476 F.3d 436 (7th Cir. 2007). *Moran* stated "there is nothing ambiguous about 'applicant' and no way to confuse an applicant with a guarantor."[7] 476 F.3d at 441. The Seventh Circuit further reasoned that interpreting "applicant" to embrace guarantors would open "vistas of liability" that Congress would have been "unlikely to accept." *Id.*

The Sixth Circuit in *RL BB Acquisition* disagreed with the Seventh Circuit's "vistas of liability" concern. *RL BB Acquisition*, 754 F.3d at 386. The Sixth Circuit stated it was "not troubled by the prospect of guarantors being made whole after a creditor violates the law." *Id.* The Sixth Circuit expressed its unwillingness to "strike down a valid regulation to salvage bad underwriting" and "invalidate a regulation over a disagreement with an agency's policy which Congress has had time and opportunity to reverse." *Id.*

---

[7] The Seventh Circuit later referred to this paragraph as dicta in *Estate of Davis v. Wells Fargo Bank*, 633 F.3d 529, 538 (7th Cir. 2011). Concerns raised regarding the definition of "applicant" in *Moran* were merely dicta because there was no need to resolve the threshold issue of whether a plaintiff was an "applicant" under the ECOA because the plaintiff in *Moran* had failed to submit sufficient evidence of discrimination to survive summary judgment. *Davis*, 633 F.3d at 538.

The Eighth Circuit's opinion established a clear circuit split which this Court should grant certiorari to resolve.

C. The "vast majority" of other jurisdictions, including the Third Circuit, agree that the definition of "applicant" includes guarantors.

The Third Circuit Court of Appeals in *Silverman v. Eastrich* accepted § 202.2(e)'s inclusion of guarantors as "applicants", stating that "the ECOA has from its inception prohibited requiring spousal guaranties." 51 F.3d 28, 31 (3d Cir. 1995). The United States District Court for the Northern District of Oklahoma in *Empire Bank v. Dumond* recently found that "[w]hether the term 'applicant' includes guarantors is not unambiguous," and that "[a]ccepting that the term includes guarantors would best effectuate the ECOA's goal of preventing discrimination based upon marital status." No. 13-CV-0388, 2013 WL 6238605, at *6 (N.D. Okla. Dec. 3, 2013).

The "vast majority of courts" agree that "applicant" should include spousal guarantors. *See Citgo Petroleum Corp. v. Bulk Petroleum Corp.*, No. 08-CV-654, 2010 WL 3931496, at *9 (N.D. Okla. Oct. 5, 2010) (declining to follow *Moran* 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); *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); *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); *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 Eighth Circuit's decision runs counter to the "vast majority." The Eighth Circuit's decision concludes Regulation B's § 202.2(e) is invalid and leaves the ECOA's scope uncertain.

D. This case raises important issues concerning the ECOA's scope. The Eighth Circuit's interpretation of "applicant" impermissibly narrows the ECOA's protection to only the borrowing entity that approaches the lender, and leaves individual minority business owners unprotected against discrimination because they do not meet the Eighth Circuit's technical definition of "applicant." The Sixth Circuit's interpretation correctly concludes additional persons/entities offering promises supporting an application can be "applicants." Review is necessary to resolve this important issue of federal law.

Certiorari may be granted when important issues are raised concerning a federal statute's scope. *See Arroyo v. U.S.*, 359 U.S. 419, 421, 79 S.Ct. 864 (1959); *Palermo v. U.S.*, 360 U.S. 343, 345, 79 S.Ct. 1217 (1959). This case raises questions regarding the extent of the ECOA's protection. The Eighth Circuit concluded the ECOA only protects borrowers or individuals who actively "participated in the loan-application process," and the Sixth Circuit protects others (such as guarantors and sureties) who offer promises supporting the application. *See Hawkins*, 761 F.3d at 943; *RL BB Acquisition*, 754 F.3d at 385. The Eighth Circuit narrowed the ECOA's protections by invalidating decades-old regulations, leaving spousal guarantors such as Valerie Hawkins and Janice Patterson without protections previously afforded.

The Eighth Circuit reasoned that the ECOA protects individuals who have "participated in the loan-application process." *Hawkins*, 761 F.3d at 943. The Eighth Circuit did not elaborate on the extent to which individuals must "participate" in the loan-application process to qualify as applicants, except to state that guarantors do not "participate" by virtue of signing their guaranties. *Id.* at 940-43. The Eighth Circuit determined that the Wives, based purely on their status as guarantors, could not be considered applicants. *Id.* The Eighth Circuit's lack of analysis is telling because it limits protection only to the borrowing entity who applied for the loan.

For example, under the Eighth Circuit's impermissibly narrow reading of "applicant," if the Wives had co-signed promissory notes with PHC, the Wives are "applicants." However, simply because the Wives signed as "absolute and unconditional" guarantors, which CBR asserts leaves the Wives in the same position as if they had co-signed the notes, the Eighth Circuit ruled that the Wives are not entitled to ECOA protection. The Eighth Circuit's narrow reading is circuitous and elevates form over substance.

The ECOA prohibits discrimination against "any applicant, with respect to any aspect of a credit transaction." 15 U.S.C. § 1691(a). The Eighth Circuit made an end-run around the "any aspect of a credit transaction" language. The Eighth Circuit ignored this expansive language and ruled, without definition or explanation, that ECOA protection is only afforded to participants in the "loan application process."

Hawkins, 761 F.3d at 943. What does this vague notion really mean? Is only the borrowing entity participating in "any aspect of a credit transaction"? Is a lender-required spousal guarantor not participating? Did PHC's owners, Chris Patterson and Gary Hawkins, also guarantors, participate in the "loan application process"? If so, how was their participation different than the Wives'? These questions indict the Eighth Circuit's ruling.

Under the Eighth Circuit's narrow reading, if two minority women form a limited liability company to operate their business, and they are denied credit, they have no standing because the limited liability company is technically the "borrower" and the only "applicant." The Eighth Circuit followed neither its own precedent nor precedent from this Court. Rather than give *Chevron* deference to the FRB's Congressionally delegated interpretation of "applicant" for "any aspect of a credit transaction," the Eighth Circuit, utilizing the fiction that the Wives' liability was "secondary" to that of PHC, imposed its "own construction on the [ECOA]." *Young v. Community Nutrition Institute*, 476 U.S. 974, 980, 106 S.Ct. 2360 (1986) (quoting *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43).

The protections afforded by and liability imposed under the ECOA are important issues with far-reaching consequences for lenders, future credit applicants, and lender-required spousal guarantors. Parties to credit transactions lack definitive guidance. Without review by this Court, "federal law will

be administered in different ways in different parts of the country; citizens in some circuits are subject to liabilities or entitlements that citizens in other circuits are not burdened with or entitled to." *Beaulieu v. United States*, 497 U.S. 1038, 110 S.Ct. 3302 (1990) (White, J., dissenting) (denial of petition for writ of certiorari); *see also Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393, 43 S.Ct. 422 (1923) (noting that granting review is proper in "cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals").

E. The ECOA and Regulation B protect individuals such as Valerie Hawkins and Janice Patterson from financial ruin resulting from their spouses' failed business ventures. The Eighth Circuit's interpretation of "applicant" removes spousal guarantors from the ECOA's protection, permits destruction of disinterested spouses' creditworthiness, and promotes credit discrimination against married women.

Small business owners like Gary Hawkins are often mandated to obtain spousal guaranties as a condition for a commercial loan. By requiring the spouse to guaranty credit to a borrowing entity in which that spouse has no interest or position, the lender requires

the spousal guarantor to incur (often extensive) liability solely based on marital status. The disinterested spousal guarantor does not control significant liabilities resulting from business failures. These liabilities impair the spouse's creditworthiness, often making it impossible to independently qualify for future credit.

For example, Valerie Hawkins, according to CBR's allegations, was "primarily and unconditionally" liable for over $2 million. If lenders are permitted to require uninterested spousal guaranties, credit will be unavailable to otherwise creditworthy, married applicants such as Valerie Hawkins. *See Anderson v. United Finance Co.,* 666 F.2d 1274, 1277 (9th Cir. 1982).

Curiously, the Eighth Circuit concluded that the ECOA's policies "focus on ensuring fair access to credit by preventing lenders from excluding borrowers from the credit market based on the borrower's marital status." *Hawkins*, 761 F.3d at 942. The Eighth Circuit claims that the ECOA's purpose does not extend to spousal guarantors who claim to have been improperly *included* in the lending process, rather than *excluded* due to marital status. *Id.* The Eighth Circuit's analysis ignores damage to the disinterested spouse's independent creditworthiness caused by spousal guaranties required by lenders.

Here, CBR required Valerie Hawkins to execute personal guaranties which CBR claims require her to individually repay the Loans. Ms. Hawkins holds no

ownership interest, position, or other interest in PHC. CBR required that she execute personal guaranties as a condition for PHC, her husband's small business, to receive credit from CBR.

Married applicants saddled with their spouse's debt become unbankable and unable to independently qualify for credit. Regulation B's inclusion of spousal guarantors as "applicants" "best effectuate[s] the ECOA's goal of preventing discrimination based upon marital status." *Empire Bank v. Dumond*, No. 13-CV-0388, 2013 WL 6238605, at *6 (N.D. Okla. Dec. 3, 2013). The Eighth Circuit's decision eliminates "entire aspects of the Federal Reserve Board's implementation scheme," including protection for spousal guarantors. *Citgo Petroleum Corp.,* 2010 WL 3931496, at *9.

Review is necessary to resolve the conflict between the Sixth and Eighth Circuits and to reverse the Eighth Circuit's erroneous ruling in *Hawkins v. Community Bank of Raymore*.

II. If Congress charges an agency to implement and enforce a statute, then deference is granted to the agency's interpretation of that statute. Congress expressly delegated to the Federal Reserve Board broad authority to prescribe regulations necessary to effectuate the ECOA's purposes. The Eighth Circuit failed to follow binding authorities by substituting its own construction of "applicant" for the decades-long reasonable interpretation made by the Federal Reserve Board.

Congress expressly delegated authority to the FRB to "prescribe regulations" that "in the judgment of the [Federal Reserve Board] are necessary or proper to effectuate the purposes" of the ECOA, "to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith." 15 U.S.C. § 1691b(a). The FRB followed its Congressional directive and interpreted the term "applicant" promulgating Regulation B to effectuate the purposes of the ECOA. It is well-settled that the agency's interpretation of the statute it is charged to administer is entitled to great deference:

> The view of the agency charged with administering the statute is entitled to considerable deference; and to sustain it, we need not find that it is the only permissible construction that [the agency] might have adopted but only that [the agency's] understanding of this very 'complex statute' is a sufficiently

> rational one to preclude a court from substituting its judgment for that of [the agency].

Young v. Community Nutrition Institute, 476 U.S. 974, 981, 106 S.Ct. 2360 (1986) (citations omitted).

Chevron deference is appropriate "when it appears that Congress delegated authority to the agency to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority." *Beeler v. Astrue*, 651 F.3d 954, 959 (8th Cir. 2011) (citing *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 129 S.Ct. 1498 (2009)).

The ECOA prohibits discrimination against "any applicant, with respect to any aspect of a credit transaction." 15 U.S.C. § 1691(a). The Eighth Circuit made an end-run around the "any aspect of a credit transaction" language. The Eighth Circuit ignored this expansive language and ruled, without definition or explanation, that ECOA protection is only afforded to participants in the "loan application process." *Hawkins*, 761 F.3d at 943. Under the Eighth Circuit's narrow reading, if two minority women form a limited liability company to operate their business, and they are denied credit, they have no standing because the limited liability company is technically the "borrower" and the only "applicant." The Eighth Circuit followed neither its own precedent nor precedent from this Court. Rather than give *Chevron* deference to the FRB's Congressionally delegated interpretation of "applicant" for "any aspect of a credit transaction,"

the Eighth Circuit, utilizing the fiction that the Wives' liability was "secondary" to that of PHC, imposed its "own construction on the [ECOA]." *Young*, 476 U.S. at 980 (quoting *Chevron*, 467 U.S. at 842-43).

Here, the Eighth Circuit's substitution of its judgment for the FRB's ignores the Wives' position at each loan renewal. The computer-generated form guaranties, routinely utilized by CBR and other lenders, impose "primary and unconditional liability." At each renewal, Valerie Hawkins, who CBR claims is "primarily and unconditionally" liable for over $2 million, certainly wanted "an extension, renewal or continuation of credit" as provided under the ECOA. 15 U.S.C. § 1691a. Under the Eighth Circuit's narrow reasoning, a "primarily and unconditionally liable" spousal guarantor who wants to renew, extend or continue the credit is not an "applicant" because Congress unambiguously intended to exclude them from the ECOA's protections because they did not participate in the initial "loan-application process." The Eighth Circuit's conclusion ignores that an "applicant" for "any aspect of a credit transaction" includes loan renewals.

Finally, the ECOA "has undergone several amendments since the Federal Reserve included guarantors within the definition of 'applicant' – including an extensive amendment after *Moran* was decided – and none has clarified that the term 'applicant' cannot include guarantors." *RL BB Acquisition*, 754 F.3d at 386. "[C]ongressional failure to revise or repeal the

agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress." *Young*, 476 U.S. at 983 (quoting *NLRB v. Bell Aerospace, Co.*, 416 U.S. 267, 275, 94 S.Ct. 1757 (1974)). Congress's decision to leave unchanged the FRB's ECOA interpretation and promulgation of Regulation B did not give the Eighth Circuit license to substitute its judgment for the FRB's. *Chevron*, 467 U.S. at 844 ("A court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.").[8]

III. Review is necessary because the Eighth Circuit's decision on this important federal question conflicts with state courts of last resort. The Eighth Circuit's decision conflicts with the Alaska Supreme Court's decision in *Still v. Cunningham*, the Iowa Supreme Court's decision in *Bank of the West v. Kline*, the Missouri Supreme Court's decision in *Boone Nat. Sav. & Loan Ass'n v. Crouch*, and the Virginia Supreme Court's decision in *Eure v. Jefferson Nat'l Bank*.

The Eighth Circuit's opinion directly conflicts with decisions by the Alaska, Iowa, Missouri, and

[8] Unlike the Eighth Circuit, the Sixth Circuit is unwilling to "strike down a valid regulation to salvage bad underwriting" and "invalidate a regulation over a disagreement with an agency's policy which Congress has had time and opportunity to reverse." *RL BB Acquisition*, 754 F.3d at 386.

Virginia Supreme Courts. *See* Sup. Ct. R. 10(a)-(b) (providing that the Court, in considering review on a writ of certiorari, considers whether "a United States court of appeals . . . has decided an important federal question in a way that conflicts with a decision by a state court of last resort."). Review is necessary to resolve this split in authority.

The Alaska Supreme Court ruled that a wife was not liable on her guaranty because the lender violated the ECOA by requiring her guaranty. *Still v. Cunningham*, 94 P.3d 1104, 1118 (Alaska 2004) (affirming judgment exonerating Wanda Still from liability on guaranty and reversing and remanding for entry of attorney's fees in favor of Mrs. Still for successful assertion of claim for equitable relief under 15 U.S.C. § 1691e(c)).

The Iowa Supreme Court ruled that spousal guarantors are "applicants" with standing to assert ECOA violations. *Kline*, 782 N.W.2d at 458. The Iowa Supreme Court enforced § 202.2(e)'s definition of "applicant," finding that the Federal Reserve Board properly exercised its authority to enact regulations to carry out the ECOA's purposes. *Id.* at 457-58. If lenders are allowed to require and enforce spousal guaranties, "the purpose of the act – that a creditor cannot require the signature of an applicant's spouse or any other person if the applicant is individually creditworthy – would be frustrated." *Id.* at 462.

The Eighth Circuit contradicted the Iowa Supreme Court's opinion by stating that the definition of

"applicant" does not include guarantors. The Eighth Circuit's championing of the dicta in *Moran* not only created a conflict with the Sixth Circuit, but runs counter to established Iowa Supreme Court precedent. Spousal guarantors in Iowa state courts are afforded protection by the ECOA, but not in federal district court in Iowa.

The Missouri Supreme Court ruled that a spousal guarantor need not have ECOA standing to defend against enforcement of her illegal guaranty. *Boone Nat. Sav. & Loan Ass'n v. Crouch*, 47 S.W.3d 371, 374-75 (Mo. 2001). In *Boone*, a spousal guarantor's claim for damages and attorneys' fees was time-barred by the ECOA's two-year statute of limitations. *Id.* at 374. The spousal guarantor was nevertheless allowed to assert the "essence" of her ECOA claim as an affirmative defense to liability. *Id.* at 375. The Missouri Supreme Court decided that the guaranty contract was unenforceable by way of "estoppel" when illegally procured in violation of the ECOA and Regulation B. *Id.* at 376.

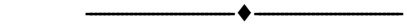
Regulation B, § 202.7(d) prohibits lenders from requiring spousal guaranties. *Boone* affords Valerie Hawkins and Janice Patterson standing to defend against the enforcement of guaranties illegally procured in violation of § 202.7(d) even if they are not "applicants" under the ECOA. The Eighth Circuit, however, in contravention of *Boone*, ruled that "Hawkins and Patterson are not applicants under the ECOA" and therefore CBR "did not violate the ECOA by

requiring them to execute the guaranties." *Hawkins*, 761 F.3d at 943.

The remedies and/or defenses available to a spousal guarantor in Missouri now depend on the forum of the suit. A spousal guarantor in federal district court in Missouri is afforded no protections by the ECOA, but in a Missouri state court can assert a defense that a guaranty was illegally procured under the ECOA.

Similarly, the Virginia Supreme Court held that the ECOA could be used by the wife to avoid liability on her guaranty which she had been required to sign solely because of her status as the wife of the credit applicant. *Eure v. Jefferson Nat'l Bank*, 448 S.E.2d 417 (Va. 1994) (reversing circuit court's judgment for lender and remanding for judgment in favor of Mrs. Eure on lender's guaranty claim.). The Eighth Circuit's decision eliminating protection for spousal guarantors conflicts with decisions issued by the Alaska and Virginia Supreme Courts.

Review is necessary to resolve the conflict between the Eighth Circuit and the state supreme courts in Alaska, Iowa, Missouri, and Virginia. *See* Sup. Ct. R. 10(a).



CONCLUSION

For the foregoing reasons, Petitioners request this Court grant review to reverse the Eighth Circuit Court of Appeals' holding that the ECOA's definition

of "applicant" unambiguously excludes guarantors. Petitioners also request remand of this proceeding to the District Court for resolution on the merits. Due to the complex statutory and regulatory scheme at issue, Petitioners respectfully request the Court to invite the Solicitor General to file a brief in this case expressing the views of the United States.

Respectfully submitted,

JOHN M. DUGGAN
DERON A. ANLIKER
JAY T. SHADWICK
DUGGAN SHADWICK DOERR & KURLBAUM LLC
11040 Oakmont
Overland Park, Kansas 66210
(913) 498-3536
jduggan@kc-dsdlaw.com
danliker@kc-dsdlaw.com
jshadwick@kc-dsdlaw.com

Attorneys for Petitioners
Valerie J. Hawkins and
Janice A. Patterson

761 F.3d 937
United States Court of Appeals,
Eighth Circuit.

Valerie J. HAWKINS, Individually; Janice A. Patterson, Individually Plaintiffs-Appellants

v.

COMMUNITY BANK OF RAYMORE, Defendant-Appellee.

No. 13-3065. | Submitted: April 17, 2014. | Filed: Aug. 5, 2014.

Attorneys and Law Firms

John M. Duggan, argued, of Overland Park, KS (Deron A. Anliker, of Overland Park, KS., David Lewis Ballew, of Overland Park, KS, on the brief), for appellant.

Greer Shirreffs Lang, argued, of Kansas City, MO (Justin Marshall Nichols, on the brief, of Kansas City, MO,), for appellee.

Before SMITH, COLLOTON, and GRUENDER, Circuit Judges.

Opinion

GRUENDER, Circuit Judge.

Valerie Hawkins ("Hawkins") and Janice Patterson ("Patterson") appeal the district court's[1] grant of

[1] The Honorable Dean Whipple, United States District Judge for the Western District of Missouri.

summary judgment in favor of Community Bank of Raymore ("Community") on their claim under the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691 *et seq.,* and the district court's order striking their demand for a jury trial. For the reasons described below, we affirm.

I. Background

Hawkins is married to Gary Hawkins, and Patterson is married to Chris Patterson. PHC Development, LLC ("PHC"), is a Missouri limited liability company with two members: Gary Hawkins and Chris Patterson, the latter in his capacity as trustee of the Chris L. Patterson and Janice A. Patterson Trust. Neither Hawkins nor Patterson have any legal interest in PHC. Between 2005 and 2008, Community made four loans – totaling more than $2,000,000 – to PHC to fund the development of a residential subdivision. Each loan was modified several times. In connection with each loan and each modification, Hawkins, Patterson, and their husbands executed personal guaranties in favor of Community to secure the loans. Patterson also executed a deed of trust in connection with one of the modifications. In April 2012, PHC failed to make payments due under the loan agreements. Community declared the loans to be in default, accelerated the loans, and demanded payment both from PHC and from Hawkins and Patterson as guarantors.

Soon thereafter, Hawkins and Patterson filed this action against Community, seeking damages and an order declaring that their guaranties were void and unenforceable. They alleged that Community had required them to execute the guaranties securing PHC's loans solely because they are married to their respective husbands. They claimed that this requirement constituted discrimination against them on the basis of their marital status, in violation of the ECOA. Community, in turn, filed several state-law counterclaims, including claims for breach of the guaranties. As an affirmative defense to the breach-of-guaranty claims, Hawkins and Patterson argued that the guaranties were unenforceable as violative of the ECOA.

Community moved for summary judgment on Hawkins and Patterson's ECOA claim and on its breach-of-guaranty counterclaims. The district court concluded that Hawkins and Patterson were not "applicants" within the meaning of the ECOA and thus that Community had not violated the ECOA by requiring them to execute the guaranties. Accordingly, the district court granted summary judgment in favor of Community on Hawkins and Patterson's ECOA claim and on their ECOA-based affirmative defense to Community's breach-of-guaranty counterclaims. The district court then dismissed Community's state-law counterclaims without prejudice, declining to exercise continuing supplemental jurisdiction pursuant to 28 U.S.C. § 1367(c)(3). Hawkins and Patterson timely appealed the grant of summary

judgment in favor of Community and the district court's order striking their demand for a jury trial.

II. Discussion

We review the district court's grant of summary judgment *de novo,* viewing the record in the light most favorable to the nonmoving parties and giving them the benefit of all reasonable inferences. *Barnhardt v. Open Harvest Coop.,* 742 F.3d 365, 369 (8th Cir.2014). Summary judgment is proper only if "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).

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 . . . marital status." 15 U.S.C. § 1691(a). The statute defines "applicant" 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). Interpreting this statutory definition, the Federal Reserve Bank promulgated 12 C.F.R. § 202.2(e), which provides that "the term [applicant] includes guarantors."[2] Relying on § 202.2(e), Hawkins

[2] Congress has since amended the ECOA to vest authority to promulgate regulations under the statute in the Consumer Financial Protection Bureau, rather than in the Federal Reserve

(Continued on following page)

and Patterson argue that they qualify as applicants within the meaning of the ECOA because they guaranteed PHC's debt to Community. They do not argue that they qualify as applicants on any other basis.

This case turns, then, on whether we should apply § 202.2(e)'s definition of applicant, which would permit Hawkins and Patterson to pursue an ECOA claim as applicants solely because they executed guarantees to secure PHC's loans. If they do not qualify as applicants, then Community did not violate the ECOA by requiring them to execute the guaranties. *See* 15 U.S.C. § 1691(a) (proscribing only discrimination against applicants). To determine whether we should defer to the Federal Reserve's interpretation of the ECOA's definition of applicant, we apply the two-step framework established by *Chevron U.S.A., Inc. v. Natural Resources Defense Council,* 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). Under the *Chevron* framework, "we ask first whether the intent of Congress is clear as to the precise question at issue. If, by employing traditional tools of statutory construction, we determine that Congress' intent is clear, that is the end of the matter." *North Dakota v. E.P.A.,* 730 F.3d 750, 763 (8th Cir.2013) (alteration omitted) (quoting *Baptist Health v. Thompson,* 458 F.3d 768, 773 (8th Cir.2006)). Only if we conclude that "the statute is silent or ambiguous with respect to the

---

Board. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. No. 111-203, § 1085(1), 124 Stat. 1376, 2083 (2010).

specific issue" presented will we then proceed to the second step of the *Chevron* framework, which requires us to consider whether "the agency's reading fills a gap or defines a term in a reasonable way in light of the Legislature's design." *Id.* (quoting *Baptist Health,* 458 F.3d at 773).

Applying the first step of the *Chevron* framework, we conclude that the text of the ECOA clearly provides that a person does not qualify as an applicant under the statute solely by virtue of executing a guaranty to secure the debt of another. To qualify as an applicant under the ECOA, a person must "appl[y] to a creditor directly for . . . credit, or . . . indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit." 15 U.S.C. § 1691a(b). To "apply" means "to make an appeal or request esp[ecially] formally and often in writing and usu[ally] for something of benefit to oneself." Webster's Third New International Dictionary 105 (2002). Thus, the plain language of the ECOA unmistakably provides that a person is an applicant only if she requests credit. But a person does not, by executing a guaranty, request credit. "A 'guaranty' . . . [is] a promise to answer for another person's debt, default, or failure to perform. More specifically, a guaranty is an undertaking by a guarantor to answer for payment of some debt, or performance of some contract, of another person in the event of default." 38 Am.Jur.2d Guaranty § 1 (2014). A guaranty is collateral and secondary to the underlying loan transaction between the lender and the borrower. While a guarantor no doubt desires for a lender to extend credit to

a borrower, it does not follow from the execution of a guaranty that a guarantor has requested credit or otherwise been involved in applying for credit. Thus, a guarantor does not request credit and therefore cannot qualify as an applicant under the unambiguous text of the ECOA.[3]

The Sixth Circuit recently reached the contrary conclusion, finding it to be ambiguous whether a guarantor qualifies as an applicant under the ECOA. *RL BB Acquisition, LLC v. Bridgemill Commons Dev. Grp.,* 754 F.3d 380 (6th Cir.2014)[4] The court acknowledged that "[a] guarantor does not traditionally approach a creditor herself for credit. Rather, . . . a guarantor is a third party to the larger application process." *Id.* at 385. With this much we agree, and for us, this ends the inquiry because it demonstrates that a guarantor unambiguously does not request credit.

---

[3] As noted above, a request for credit can be made directly, or it can be made indirectly by seeking to increase the credit limit on an existing credit plan. 15 U.S.C. § 1691a(b). As we have explained, we certainly do not view executing a guaranty as a *direct* request for credit. And Hawkins and Patterson have not argued that this case involves the sort of "indirect" request recognized under the ECOA.

[4] Hawkins and Patterson also argue that several other circuits have applied § 202.2(e)'s definition of applicant to include guarantors. *See, e.g., Silverman v. Eastrich Multiple Investor Fund, L.P.,* 51 F.3d 28 (3d Cir.1995); *Mayes v. Chrysler Credit Corp.,* 37 F.3d 9 (1st Cir.1994). However, these cases applied the regulatory definition without considering whether that definition warranted *Chevron* deference. As such, we do not find those cases to be instructive here.

"Where Congress has manifested its intention, we may not manufacture ambiguity in order to defeat that intent." *Bifulco v. United States,* 447 U.S. 381, 387, 100 S.Ct. 2247, 65 L.Ed.2d 205 (1980). Nevertheless, the court went on to assert that "a guarantor does formally approach a creditor in the sense that the guarantor offers up her own personal liability to the creditor if the borrower defaults." *RL BB Acquisition,* 754 F.3d at 385. We find it to be unambiguous that assuming a secondary, contingent liability does not amount to a request for credit. A guarantor engages in different conduct, receives different benefits, and exposes herself to different legal consequences than does a credit applicant. "[T]here is nothing ambiguous about 'applicant' and no way to confuse an applicant with a guarantor." *Moran Foods, Inc. v. Mid-Atlantic Market Dev. Co.,* 476 F.3d 436, 441 (7th Cir.2007) (discussing whether the Federal Reserve's interpretation of applicant to include guarantors warrants *Chevron* deference).[5]

---

[5] In *RL BB Acquisition,* the court also observed that the ECOA's separate use of the terms "applicant" and "debtor" in other portions of the statute "suggests that the applicant and the debtor are not always the same person." 754 F.3d at 385. From this, the court inferred that "it would be reasonable to conclude that the applicant could be a third party, such as a guarantor." *Id.* We are not persuaded that the ECOA's distinction between applicants and debtors compels the conclusion that a person can qualify as an applicant without *applying* for credit, that is, without requesting credit. The ECOA's definition of applicant unambiguously does not include guarantors, and we

(Continued on following page)

Because the text of the ECOA is unambiguous regarding whether a guarantor constitutes an applicant, we will not defer to the Federal Reserve's interpretation of applicant, and we conclude that a guarantor is not protected from marital-status discrimination by the ECOA. Our conclusion also comports with the purposes and policies underlying the ECOA. "The statute was initially designed, at least in part, to curtail the practice of creditors who refused to grant a wife's credit application without a guaranty from her husband." *Mayes v. Chrysler Credit Corp.,* 37 F.3d 9, 11 (1st Cir.1994); *see also Moran Foods,* 476 F.3d at 441 ("[W]hat the Act was intended to do was forbid a creditor to deny credit to a woman on the basis of a belief that she would not be a good credit risk because she would be distracted by child care or some other stereotypically female responsibility."); *Anderson v. United Fin. Co.,* 666 F.2d 1274, 1277 (9th Cir.1982). These policies focus on ensuring fair access to credit by preventing lenders from excluding borrowers from the credit market based on the borrowers' marital status. But the considerations are different in the case of a guarantor. By requesting the execution of a guaranty, a lender does not thereby exclude the guarantor from the lending process or deny the guarantor access to credit. Here, Hawkins and Patterson do not claim that they were excluded from the lending process due to their marital status.

---

are not inclined to inject ambiguity into the statute's plain text. *See Bifulco,* 447 U.S. at 387, 100 S.Ct. 2247.

Indeed, they complain that they were improperly *included* in that process by being required to execute guaranties. Thus, we believe that the purposes and policies of the ECOA buttress our interpretation of the statute's plain meaning.[6]

As noted above, Hawkins and Patterson do not argue that they qualify as applicants for any reason other than their status as guarantors. They have not alleged that they participated in the loan-application process, and they have disclaimed having any interest in PHC. Accordingly, we conclude that Hawkins and Patterson are not applicants under the ECOA, and thus Community did not violate the ECOA by requiring them to execute the guaranties. As such, the district court did not err in granting summary judgment in favor of Community on Hawkins and

---

[6] We also note that under Missouri law, which governs the loans and guaranties in this case, "co-ownership of property by a husband and wife creates a presumption of tenancy by the entirety." *Lederle v. Lederle,* 916 S.W.2d 423, 429 (Mo.Ct.App.1996). "An execution arising from a judgment against one spouse alone cannot affect property held by a husband and wife as tenants by the entireties." *Wehrheim v. Brent,* 894 S.W.2d 227, 229 (Mo.Ct.App.1995). Thus, it likely was necessary for Hawkins and Patterson to execute their guaranties in order to induce Community to loan $2,000,000 to PHC because Community would then be able to execute on any marital assets in the event of a default. Community's request that Hawkins and Patterson execute guaranties would then have been "sound commercial practice unrelated to any stereotypical view of a wife's role." *Moran,* 476 F.3d at 442.

Patterson's ECOA claim or their ECOA-based affirmative defense.

Finally, because the district court properly granted summary judgment in favor of Community on Hawkins and Patterson's ECOA claim and dismissed Community's counterclaims, this case will not proceed to trial. As such, Hawkins and Patterson's argument that the district court erred in striking their demand for a jury trial is moot.

III. Conclusion

For the foregoing reasons, we affirm.

COLLOTON, Circuit Judge, concurring.

I agree with the court that a guarantor is not an "applicant" within the meaning of 15 U.S.C. § 1691(a). The Federal Reserve Board thus exceeded its authority when it purported to redefine "applicant" in 12 C.F.R. § 202.2(e) to include "guarantors" for purposes of rules relating to when a creditor may require the signature of a spouse or other person on a credit instrument. I add these further reasons for joining the judgment of the court.

The Equal Credit Opportunity Act defines "applicant," in relevant part, as "any person who applies to a creditor . . . for . . . credit." 15 U.S.C. § 1691a(b). The ordinary meaning of "to apply," as understood at the time of the statute's enactment in 1974 and

significant amendment in 1976, is "to make an appeal or a request . . . *usu[ally] for something of benefit to oneself* . . . <~to a bank for a loan>." *Webster's Third New International Dictionary* 105 (1971) (emphasis added). Under that usual meaning, an "applicant" who "applies for credit" is one who requests credit to benefit herself, not credit to benefit a third party. That there are unusual meanings of "apply" that encompass making a request on behalf of another is not sufficient to make a term ambiguous for purposes of *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). Analysis under the first step of *Chevron* to determine whether the statutory text is unambiguous begins with ordinary meaning. *Carcieri v. Salazar,* 555 U.S. 379, 388, 129 S.Ct. 1058, 172 L.Ed.2d 791 (2009).

The context of the ECOA confirms that Congress employed the ordinary meaning of "apply" in the phrase "applies for credit." The statute contemplates a first-party applicant who requests credit to benefit herself. Section 1691(d)(1) directs that within thirty days "after receipt of a completed application for credit, a creditor shall notify *the applicant* of its action on the application." (emphasis added). The statute's use of the definite article shows that the applicant is the single person to whom credit would be extended, not a third party asking on behalf of the putative debtor. *See also* S.Rep. No. 94-589, at 7-10 (1976), 1976 U.S.C.C.A.N. 403. Similarly, the statute as amended in 1991 refers to a creditor taking action

in connection with "the applicant's application for a loan," 15 U.S.C. § 1691(e)(1), and it would be unnatural to conclude that a third party who offers a promise in support of an application thereby submits what the statute describes as an "application for a loan," *id.*, and a "completed application for credit," *id.* § 1691(d)(1).

The statute defines "adverse action" on a credit application, but excludes from that phrase "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) (emphasis added). This provision confirms that "the applicant" is the person to whom credit is extended and who is responsible for making payments on an existing loan. A guarantor or other third-party requestor does not in ordinary usage become "delinquent" or "in default" on a loan or other existing credit arrangement. But if a guarantor could be an "applicant," then the creditor's refusal to extend additional credit to a delinquent borrower would be an "adverse action" on the *guarantor's* "application," thus entitling the third-party guarantor to a statement of reasons that the creditor need not furnish to the first-party applicant. *Id.* § 1691(d)(2). This is not a natural reading of the text.

The statute specifically envisions the involvement of a third party who requests an extension of credit to a first-party applicant, but distinguishes between the third-party requestor and the "applicant": "Where a creditor has been *requested by a third*

party to make a specific extension of credit directly or indirectly *to an applicant,* the notification and statement of reasons required by this subsection may be made directly by such creditor, or indirectly *through the third party,* provided in either case that the identity of the creditor is disclosed." *Id.* § 1691(d)(4) (emphases added). Again, the statutory text confirms that the "applicant" is the party to whom credit will be extended. When ordinary meaning aligns with the natural reading of a term in the context of a statute, there is no ambiguity that gives an agency license to adopt an alternative definition. *Carcieri,* 555 U.S. at 388-90, 129 S.Ct. 1058.

The regulators seemed to recognize the plain meaning of "applicant" in the first decade after the ECOA was enacted. The Board solicited comment in 1976 about the meaning of "applicant," Equal Credit Opportunity, 41 Fed.Reg. 29,870, 29,871 (proposed July 20, 1976), but "to resolve confusion about the scope of this term," the Board specifically provided that "a guarantor, surety, endorser, or similar party" is *not* an applicant. Equal Credit Opportunity, 41 Fed.Reg. 49,123, 49,124, 49,132 (proposed Nov. 8, 1976). As the Board acknowledged, the unadorned statutory definition of "applicant" was sufficient to forbid a creditor to require the signature of a guarantor on a discriminatory basis. *Id.* at 49,124. If a creditworthy married person applies for credit, and the creditor demands based solely on marital status that her or his spouse sign a guaranty as a condition of extending credit, then the creditor has violated the

statute and regulations, and the married applicant has a cause of action against the creditor as an "aggrieved applicant." 15 U.S.C. § 1691e(a).

The Board's effort to "redefine 'applicant' . . . to include guarantors" apparently was motivated by dissatisfaction with Congress's decision to limit the cause of action under the ECOA to an "aggrieved *applicant*." *See* Equal Credit Opportunity; Revision of Regulation B; Official Staff Commentary, 50 Fed.Reg. 10,890, 10,891, 10,896 (proposed Mar. 18, 1985). The regulators observed that if a creditor illegally required a spouse to sign a guaranty as a condition of extending credit to an applicant, then only the applicant – not the guarantor – had "standing to sue" as an "aggrieved applicant." *Id.* at 10,891; *see also* Equal Credit Opportunity; Revision of Regulation B; Official Staff Commentary, 50 Fed.Reg. 48,018, 48,020 (Nov. 20, 1985). The redefinition of "applicant" in 12 C.F.R. § 202.2(e) to include "guarantors" was designed to give guarantors independent standing to sue. The Board believed that allowing guarantors to bring suit would have the effect of "enhancing protections," although the Board also thought "guarantors, if they have standing to sue, would merely join in the lawsuit" brought by "applicants" in the normal case. 50 Fed.Reg. at 48,025.

Whatever might be the salutary effects of the change in policy, it was not a choice for the Board to make. Congress opted to limit the cause of action to an "aggrieved applicant," and the statute gave "applicant" its ordinary meaning of one who applies for

credit to benefit oneself. Any decision to expand the civil liability of creditors and to provide a cause of action for guarantors must come from Congress.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

VALERIE J. HAWKINS and JANICE A. PATTERSON,	)	
Plaintiffs,	)	
v.	)	No. 12-CV-00670-DW
COMMUNITY BANK OF RAYMORE,	)	
Defendant.	)	

ORDER

(Filed May 16, 2013)

Pending before the Court is the Defendant Community Bank of Raymore' s (the "Defendant") Motion for Summary Judgment (the "Motion"). See Doc. 34. The Defendant filed suggestions in support of the Motion (Doc. 35), the Plaintiffs Valerie Hawkins and Janice Patterson (the "Plaintiffs") filed suggestions in opposition (Doc. 50), and the Defendant filed a reply brief (Doc. 64). As explained below, the Court finds that the Plaintiffs, as guarantors, are not "applicants" for credit as defined by the Equal Credit Opportunity Act ("ECOA"). Therefore, the Plaintiffs' ECOA claims fail as a matter of law and the Motion is GRANTED.

I.

Unless otherwise noted, the following facts are undisputed and only those facts necessary to resolve the Motion are discussed below. The Defendant made four separate loans to PHC Development, LLC ("PHC") in the principal amount of $2,077,900. The loans were made in connection with PHC's acquisition and development of a residential facility known as the Fox's Den Subdivision in Peculiar, Missouri. The loans were issued, modified, extended, and/or renewed on numerous occasions. Both Plaintiffs personally guaranteed repayment of the four loans to PHC, as did their husbands, Gary A. Hawkins ("Gary") and Chris L. Patterson ("Chris").

On or about April 16, 2012, the Defendant declared that the loans to PHC were in default, and demanded payment from PHC, both Plaintiffs, Gary, and Chris. The Plaintiffs filed this suit on May 31, 2012. The Plaintiffs allege that the Defendant required them to sign the guaranties simply because they were married to Gary and Chris. By imposing this requirement, the Plaintiffs allege that the Defendant "discriminated against [them] on the basis of marital status. Such acts constituted a violation of the ECOA, 15 U.S.C. § 1691(a) and of Regulation B, 12 C.F.R. § 202.7." Complaint, at ¶ 54. Among other claims, the Defendant has filed counterclaims for breach of the guaranties.

II.

Summary judgment is warranted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Sensient Tech. Corp. v. SensoryEffects Flavor Co., 613 F.3d 754, 760 (8th Cir. 2010) (citations and quotations omitted). If the moving party makes this showing, "the nonmoving party must set forth specific facts sufficient to raise a genuine issue for trial and cannot rest on allegations in the pleadings." Ryan v. Capital Contractors, Inc., 679 F.3d 772, 776 (8th Cir. 2012) (citations and quotations omitted). A genuine issue of material fact exists if a "reasonable jury could return a verdict for the non-moving party." Smith v. Hy-Vee, Inc., 622 F.3d 904, 907 (8th Cir. 2010).

III.

The pending Motion is for summary judgment, but its resolution turns on a legal, not factual issue. That issue is whether the ECOA applies to guarantors such as the Plaintiffs. If it does not, then the Defendant is entitled to summary judgment. This issue is addressed below.

Prior to enactment of the ECOA, creditors traditionally refused to extend individual credit to married women. See Anderson v. United Fin. Co., 666 F.2d 1274, 1277 (9th Cir. 1982). This refusal was based on

the wrongful "belief that [women] would not be a good credit risk because [they] would be distracted by child care or some other stereotypically female responsibility." Moran Foods, Inc. v. Mid-Atlantic Market Dev. Co., LLC, 476 F.3d 436, 441 (7th Cir. 2007). The ECOA was thus enacted in part to "eradicate credit discrimination waged against women, especially married women whom creditors traditionally refused to consider for individual credit." Midkiff v. Adams Cnty. Reg'l Water Dist., 409 F.3d 758, 771 (6th Cir. 2005) (citations and quotations omitted).

The ECOA provides that "It shall be 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)(1). An "applicant" is defined as "any person **who applies to a creditor directly for** an extension, renewal, or continuation of **credit**. . . ." 15 U.S.C. § 1691 a(b) (emphasis supplied). Based on this statutory language, the Defendant argues that the ECOA does not apply here because the Plaintiffs were guarantors, not applicants.

In response, the Plaintiffs argue that they meet the definition of "applicant" as later defined by the Board of Governors of the Federal Reserve System (the "FRB"). Specifically, the FRB promulgated Regulation B which defines an "applicant" as "includ[ing] any person who is or may become contractually liable regarding an extension of credit. For purposes of

§ 202.7(d), the term includes guarantors, sureties, endorsers, and similar parties." 12 C.F.R. § 202.2(e).[1] Under 12 C.F.R. § 202.7(d)(1), "a creditor shall not require the signature of an applicant's spouse or other person . . . if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested." Therefore, although the ECOA focuses on applicants for credit, Regulation B extends the statute to guarantors of credit.

This extension has created a split in the case law, and the Eighth Circuit Court of Appeals has not directly addressed the issue. Relying primarily on Regulation B, some courts have extended the ECOA to guarantors. See, e.g., Citgo Petroleum Corp. v. Bulk Petroleum Corp., 2010 WL 3931496, at * 9 (N.D. Okla. Oct. 5, 2010) ("This Court . . . adheres to Regulation B, such that guarantors who are required to sign a guaranty in connection with an extension of credit covered by the ECOA will continue to receive protection."). Relying primarily on the statutory definition of "applicant," other courts have found that the ECOA does not apply to guarantors. See, e.g., Champion Bank v. Reg'l Dev., LLC, 2009 WL 1351122, at * 2-3 (E.D. Mo. May 13, 2009).

---

[1] The ECOA authorizes the FRB to promulgate regulations such as Regulation B. 15 U.S.C. § 1691b(a); Moran Foods, Inc., 476 F.3d at 441.

After reviewing the ECOA, Regulation B, and the applicable case law, this Court holds that a guarantor is not an "applicant" as defined by the ECOA. As recently summarized by Judge Kays:

> The text of the law states the statute's purpose is to eradicate credit discrimination waged against women, especially married women whom creditors traditionally refused to consider for individual credit. The statute prohibits discrimination, such as denying credit or offering credit on less favorable terms, on the basis of a woman's marital status. But by sweeping guarantors into the statute, the regulation expands the ECOA beyond its intended purpose and leads to circular and illogical results in cases such as the present one, where a married woman is not being denied anything and is simply guaranteeing her spouse's business loan. An applicant is not akin to a guarantor, and interpreting applicant as embracing guarantor opens vistas of liability beyond that intended by Congress.

Smithville 169 v. Citizens Bank & Trust Co., 2013 WL 434044, at * 3 (W.D. Mo. Feb. 5, 2013) (citations and quotations omitted).

The Court agrees with this analysis and adopts its reasoning in full. The Plaintiffs here were not applicants for credit as defined by the ECOA. Instead, they were guarantors, and "a guarantor does not, by definition, apply for anything." Champion Bank, 2009 WL 1351122, at * 2. Furthermore, Regulation B is not

entitled to deference because the statutory language is clear. See Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 842-43 (1984); Moran Foods, Inc., 476 F.3d at 441 ("But there is nothing ambiguous about 'applicant' and no way to confuse an applicant with a guarantor."). For these reasons, and for the additional reasons stated by the Defendant, the Plaintiffs' claims under the ECOA must be dismissed as a matter of law.

IV.

It is hereby ORDERED that:

(1) the Defendant Community Bank of Raymore's Motion for Summary Judgment (Doc. 34) is GRANTED; and

(2) the Plaintiffs' claims against Defendant are DISMISSED WITH PREJUDICE; and

(3) the Plaintiffs' Affirmative Defense Number 21 to the Defendant's Amended Counterclaims[2] is STRUCK.

---

[2] The Defendant moved for summary judgment on Plaintiffs' Affirmative Defense No. 20. Affirmative Defense No. 20, however, asserts that "Defendant's claims are barred by the doctrine of unclean hands." See Doc. 61, at ¶ 265. It is Affirmative Defense No. 21 that relates to alleged marital discrimination under the ECOA.

IT IS SO ORDERED.

Date: May 17, 2013

/s/ Dean Whipple
Dean Whipple
United States
District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

VALERIE J. HAWKINS, et al.,	)	
Plaintiffs,	)	
v.	)	No. 12-CV-00670-DW
COMMUNITY BANK OF RAYMORE,	)	
Defendant.	)	

ORDER

(Filed Aug. 30, 2013)

Pending before the Court is the Plaintiff Valerie J. Hawkins and Janice A. Patterson's (the "Plaintiffs") Suggestions in Support of Dismissal of Defendant's Counterclaims Pursuant to 28 U.S.C. § 1367(c)(3), and the Defendant Community Bank of Raymore's (the "Bank") Brief Regarding Supplemental Jurisdiction. See Docs. 101, 102. The only remaining claims in this case are state law counterclaims asserted by the Bank, and the parties are not diverse. Consequently, and as explained below, the Bank's counterclaims are DISMISSED WITHOUT PREJUDICE.

I.

Only those facts necessary to resolve the supplemental jurisdiction issue are discussed below, and

those facts are simplified to the extent possible. The following facts are primarily taken from the parties' briefs and exhibits, as well as prior Orders issued in this case, without further quotation or attribution unless otherwise noted.

The Plaintiffs filed this action against the Bank on May 31, 2012. See Doc. 1, Complaint ("Compl."). The Complaint alleges that the Court has original subject matter jurisdiction under "28 U.S.C. § 1331 because this matter arises out of Federal law under 15 U.S.C. § 1691(a) and 12 C.F.R. § 202.7." Compl. at ¶ 4. The Plaintiffs asserted a single claim under the federal Equal Credit Opportunity Act (the "ECOA"). See 15 U.S.C. § 1691(a). The Plaintiffs alleged that the Bank required them to sign certain guaranties simply because of their marital status. By imposing this requirement, the Plaintiffs alleged that the Bank "discriminated against [them] on the basis of marital status. Such acts constituted a violation of the ECOA, 15 U.S.C. § 1691(a) and of Regulation B, 12 C.F.R. § 202.7." Compl., at ¶ 54.

The Bank responded by filing a Counterclaim. See Doc. 40, First Amended Counterclaim ("Counterclaim"). The Counterclaim alleges that the Court "has subject matter jurisdiction over this action under 28 U.S.C. § 1331 and [supplemental jurisdiction under] 28 U.S.C. § 1367(a)." Counterclaim, ¶ 4. In total, the Bank asserts six separate counterclaims, and they all arise under state law. Count I asserts a claim against the Plaintiff Janice Patterson for breaching her guaranties. Count II asserts a claim against the

Plaintiff Valerie Hawkins for breaching her guaranties. The remaining four counts assert fraudulent and negligent misrepresentation claims against the Plaintiffs.

On March 6, 2013, the Plaintiffs filed their Reply to the Bank's Counterclaim. See Doc. 61. In their Reply, the Plaintiffs "admit that the United States District Court has subject matter jurisdiction over Plaintiffs' asserted action, but deny that this Court has subject matter jurisdiction over [the Bank's] Amended Counterclaims." Id., ¶ 3. In an Order dated May 17, 2013, the Court granted the Bank's motion for summary judgment and dismissed the Plaintiffs' federal claims with prejudice. See Doc. 68.

Therefore, only the Bank's state law counterclaims remain pending. In addition, the parties are not completely diverse as all are residents of Missouri. Compl., ¶¶ 1-3; Counterclaim, ¶¶ 1-3; 28 U.S.C. § 1332. As a result – and after reviewing the parties' briefs regarding related state court cases (Docs. 72, 78, 80) – the Court ordered both parties to file a brief on whether it should exercise supplemental jurisdiction over the counterclaims. The Plaintiffs' brief argues that the Court should not exercise supplemental jurisdiction; the Bank argues that it should. As explained below, the Court agrees with the Plaintiffs.

II.

It is axiomatic that federal courts are courts of limited jurisdiction. Arkansas Blue Cross & Blue Shield v. Little Rock Cardiology Clinic, P.A., 551 F.3d 812, 816 (8th Cir. 2009). In general, federal courts only have original jurisdiction over (1) cases involving a federal question; and (2) cases in which the parties are diverse and where the amount in controversy exceeds $75,000. See 28 U.S.C. § 1331 (providing for federal question jurisdiction); 28 U.S.C. § 1332(a) (providing for diversity jurisdiction).

In this case, original jurisdiction was based on federal question jurisdiction because the Plaintiffs asserted a claim arising under federal law. See 28 U.S.C. § 1331; § 15 U.S.C. § 1691(a). As stated above, that federal claim has been dismissed with prejudice. The only remaining claims are the Bank's counterclaims that arise under state law. Consequently, original jurisdiction is lacking because there are no pending claims arising under federal law, and because the parties are not diverse. See 28 U.S.C. §§ 1331, 1332.

Therefore, the issue is whether the Court should exercise supplemental jurisdiction over the Bank's state law counterclaims. The exercise of supplemental jurisdiction is discretionary and may be declined if:

> (1) the claim raises a novel or complex issue of State law,

> (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
>
> (3) the district court has dismissed all claims over which it has original jurisdiction, or
>
> (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c)(1)-(4). For two primary reasons, the Court declines exercising supplemental jurisdiction in this case.

First, "Congress unambiguously gave district courts discretion in 28 U.S.C. § 1367(c) to dismiss supplemental state law claims when all federal claims have been dismissed." Gibson v. Weber, 431 F.3d 339, 342 (8th Cir. 2005). As explained by the Supreme Court, "in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine . . . will point toward declining to exercise jurisdiction over the remaining state-law claims." Missouri Roundtable for Life v. Carnahan, 676 F.3d 665, 678 (8th Cir. 2012) (quoting Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988)). In part, this is because federal courts should "exercise judicial restraint and avoid state law issues wherever possible." Thomas v. Dickel, 213 F.3d 1023, 1026 (8th Cir. 2000) (affirming district court's decision to decline

supplemental jurisdiction) (citations and quotations omitted).

Here, the Court finds that a Missouri state court should resolve the Bank's counterclaims that arise under state law and involve Missouri residents. Stated differently, "[o]ut of respect for the principles of federalism and for the courts of the State of [Missouri], the Court will exercise its discretion under section 1367(c)[3] to decline supplemental jurisdiction with respect to [the Bank's] state-law claims." Graham v. Entergy Arkansas, Inc., 2011 WL 4963026, at * 5 (E.D. Ark. Oct. 19, 2011).

Second, the Bank's counterclaims "substantially predominate[ ] over the claim or claims over which the district court has original jurisdiction." 28 U.S.C. § 1367(c)(2). The federal claim brought by the Plaintiffs was relatively straightforward and narrow in scope. In contrast, the Bank's six separate counterclaims dramatically expand the scope of this litigation and substantially predominate over that federal claim.

In particular, the Plaintiffs' Complaint is 13 pages long and only asserts a claim under ECOA and related federal regulations. The Bank's Counterclaim is 46 pages long and asserts six separate claims for breach of the guaranties, fraud, and negligent misrepresentation. Because those claims substantially predominate over the Plaintiffs' ECOA claim, the Court declines to exercise supplemental jurisdiction over them. See Morris v. Blue Sky Mgmnt., LLC, 2012

WL 527936, at * 5 (W.D. Mo. Feb. 16, 2012) (declining supplemental jurisdiction in part because the defendant's "state law counterclaims could predominate over [p]laintiff's [federal] claims").

The Bank argues that dismissal would waste the resources already expended by the parties and the Court. Doc. 101, p. 2-5. This argument is not supported by the record or the posture of this and a related state court case. With respect to the parties' resources, discovery produced in this case may be used in related state actions or in a subsequently-filed case. Indeed, at the beginning of this case, the parties agreed that "[i]t is the parties['] intention, to the extent possible, to conduct discovery in this and the related state court actions concurrently for use in this and the related state court actions." Doc. 11, p. 4. Moreover, with minor revisions, documents prepared for this case – including the Bank's motion for summary judgment – can be refiled in state court. See, e.g., C&J Mgmt. Corp. v. Anderson, 707 F. Supp. 2d 858, 864 (S.D. Iowa 2009) (dismissing state law claims in part because "the Court does not foresee a significant inconvenience to the parties if Plaintiffs refile their state claims in state court since their work, to date, can be directly applied in a state court action").

Judicial economy would also be served by dismissal of this case. This is because the parties have asserted related claims and defenses in this Court and in state court. See Docs. 72, 78, 80. Specifically, shortly after this case was filed, PHC Development,

LLC ("PHC") and the Plaintiffs' husbands filed a lawsuit against the Bank in the Circuit Court of Cass County, Missouri (the "PHC State Action"). See Case No. 12CA-CV01932. In the PHC State Action, the Bank filed counterclaims against PHC and the Plaintiffs' husbands for breach of promissory notes and guaranties that are related to the Bank's counterclaims in this case.

In both this case and in the PHC State Action, the Plaintiffs, their husbands, and PHC raise many of the same factual and legal defenses to the Bank's counterclaims. Compare, e.g., Doc. 61, ¶¶ 154-180 with Doc. 72-15, ¶¶ 183-210. By way of just one example, PHC, the Plaintiffs, and their husbands claim that "The Bank cannot breach the agreements with the PHC Development Parties, interfere with the PHC Development Parties' performance, and then declare a default so as to sue [Plaintiffs, their husbands, and PHC] for money. The Bank's prior material breach excused [them] of their performance under their alleged Guaranties [and other agreements]. Doc. 61, ¶ 185; Doc. 72-15, ¶ 213.[1] There is a clear overlap of factual and legal issues in both this case and in the

[1] In the PHC State Action, the Bank also asserts fraudulent and negligent misrepresentation counterclaims against the Plaintiffs' husbands that are strikingly similar to the tort claims asserted against Plaintiffs in this case. Compare Doc. 40, p. 23-44 with Doc. 72-11, p. 10-33. This further demonstrates the similarities between these cases, and also demonstrates that documents prepared for this case may be reused in subsequent state proceedings.

PHC State Action. See Docs. 70, 72, 78-81.[2] Dismissal will promote judicial economy because two courts will not be considering similar facts, defenses, and legal issues. Dismissal will also prevent inconsistent results arising from those separate proceedings.

III.

For the foregoing reasons, the Court declines to exercise supplemental jurisdiction over the state law counterclaims. Consequently, it is hereby ORDERED that the Community Bank of Raymore's First Amended Counterclaim (Doc. 40) is DISMISSED WITHOUT PREJUDICE. The Bank is entitled to refile its claims in state court in accordance with the tolling provision set forth in 28 U.S.C. § 1367(d).[3] The Clerk of Court is directed to terminate any pending motions, and to then mark this case as closed.

---

[2] To the extent dismissal would cause any unfairness or other undesirable consequences, those results are a product of the parties' decision to simultaneously litigate similar facts and claims in separate forums. Indeed, the Court would have raised the issue of supplemental jurisdiction earlier had it been fully apprised of the substantial similarities between the pending cases. For these reasons, the Court also finds that the pending state court cases provide a "compelling reason[ ] for declining jurisdiction." 28 U.S.C. § 1367(c)(4).

[3] "The tolling provision of section 1367(d) provides 'assurance that state-law claims asserted under § 1367(a) will not become time barred while pending in federal court.' " Frazier v. Nebraska Dep't of Correctional Serv., WL 2005 WL 1252200, at * 2 (D. Neb. May 24, 2005) (quoting Jinks v. Richland Cnty., 538 U.S. 456, 464 (2003)).

IT IS SO ORDERED.

Date: August 30, 2013

/s/ Dean Whipple
Dean Whipple
United States
District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

JUDGMENT IN A CIVIL CASE

VALERIE HAWKINS, et al., Plaintiff,	)	
vs.	)	Case No. 12-00670-CV-W-DW
COMMUNITY BANK OF RAYMORE, Defendant.	)	

_____ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

__X__ **Decision by Court.** The issues have been considered and a decision has been rendered by the Court.

IT IS ORDERED AND ADJUDGED that the Community Bank of Raymore's First Amended Counterclaim (Doc. 40) is DISMISSED WITHOUT PREJUDICE.

ANN THOMPSON
Clerk of Court

Date: September 6, 2013 /s/ Terri Moore
(by) Terri Moore,
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

AMENDED JUDGMENT IN A CIVIL CASE

VALERIE HAWKINS, et al., Plaintiff,	)	
vs.	)	Case No. 12-00670-CV-W-DW
COMMUNITY BANK OF RAYMORE, Defendant.	)	

_____ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

__X__ **Decision by Court.** The issues have been considered and a decision has been rendered by the Court.

IT IS ORDERED AND ADJUDGED that the Defendant Community Bank of Raymore's First Amended Counterclaim (Doc. 40) is DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED AND ADJUDGED that pursuant to this Court's order of May 16, 2013 that Defendant Community Bank of Raymore's Motion for Summary Judgment (Doc. 34) is GRANTED; (2) the Plaintiffs' claims against Defendant are DISMISSED WITH PREJUDICE; and (3) the Plaintiffs' Affirmative Defense Number

21 to the Defendant's Amended Counterclaims is STRUCK.

ANN THOMPSON
Clerk of Court

Date: September 10, 2013 /s/ Terri Moore
(by) Terri Moore,
Deputy Clerk

RELEVANT STATUTES AND REGULATIONS

15 U.S.C. § 1691

Scope of prohibition

(a) Activities constituting discrimination

It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction –

(1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);

(2) because all or part of the applicant's income derives from any public assistance program; or

(3) because the applicant has in good faith exercised any right under this chapter.

(b) Activities not constituting discrimination

It shall not constitute discrimination for purposes of this subchapter for a creditor –

(1) to make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of credit-worthiness;

(2) to make an inquiry of the applicant's age or of whether the applicant's income derives from any public assistance program if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of

credit-worthiness as provided in regulations of the Bureau;

(3) to use any empirically derived credit system which considers age if such system is demonstrably and statistically sound in accordance with regulations of the Bureau, except that in the operation of such system the age of an elderly applicant may not be assigned a negative factor or value;

(4) to make an inquiry or to consider the age of an elderly applicant when the age of such applicant is to be used by the creditor in the extension of credit in favor of such applicant; or

(5) to make an inquiry under section 1691c-2 of this title, in accordance with the requirements of that section.

(c) Additional activities not constituting discrimination

It is not a violation of this section for a creditor to refuse to extend credit offered pursuant to –

(1) any credit assistance program expressly authorized by law for an economically disadvantaged class of persons;

(2) any credit assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons; or

(3) any special purpose credit program offered by a profit-making organization to meet special social needs which meets standards prescribed in regulations by the Bureau;

if such refusal is required by or made pursuant to such program.

(d) Reason for adverse action; procedure applicable; "adverse action" defined

(1) Within thirty days (or such longer reasonable time as specified in regulations of the Bureau for any class of credit transaction) after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.

(2) Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by –

> **(A)** providing statements of reasons in writing as a matter of course to applicants against whom adverse action is taken; or
>
> **(B)** giving written notification of adverse action which discloses (i) the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made within sixty days after such notification, and (ii) the identity of the person or office from which such statement may be obtained. Such statement may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

(3) A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken.

(4) Where a creditor has been requested by a third party to make a specific extension of credit directly or indirectly to an applicant, the notification and statement of reasons required by this subsection may be made directly by such creditor, or indirectly through the third party, provided in either case that the identity of the creditor is disclosed.

(5) The requirements of paragraph (2), (3), or (4) may be satisfied by verbal statements or notifications in the case of any creditor who did not act on more than one hundred and fifty applications during the calendar year preceding the calendar year in which the adverse action is taken, as determined under regulations of the Bureau.

(6) For purposes of this subsection, the term "adverse action" means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. Such term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.

(e) Copies furnished to applicants

(1) In general

Each creditor shall furnish to an applicant a copy of any and all written appraisals and valuations developed in connection with the applicant's

application for a loan that is secured or would have been secured by a first lien on a dwelling promptly upon completion, but in no case later than 3 days prior to the closing of the loan, whether the creditor grants or denies the applicant's request for credit or the application is incomplete or withdrawn.

(2) Waiver

The applicant may waive the 3 day requirement provided for in paragraph (1), except where otherwise required in law.

(3) Reimbursement

The applicant may be required to pay a reasonable fee to reimburse the creditor for the cost of the appraisal, except where otherwise required in law.

(4) Free copy

Notwithstanding paragraph (3), the creditor shall provide a copy of each written appraisal or valuation at no additional cost to the applicant.

(5) Notification to applicants

At the time of application, the creditor shall notify an applicant in writing of the right to receive a copy of each written appraisal and valuation under this subsection.

(6) Valuation defined

For purposes of this subsection, the term "valuation" shall include any estimate of the value of a dwelling developed in connection with a creditor's

decision to provide credit, including those values developed pursuant to a policy of a government sponsored enterprise or by an automated valuation model, a broker price opinion, or other methodology or mechanism.

---

15 U.S.C. § 1691a

Definitions; rules of construction

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term "applicant" means 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.

(c) The term "Bureau" means the Bureau of Consumer Financial Protection.

(d) The term "credit" means 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.

(e) The term "creditor" means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.

(f) The term "person" means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(g) Any reference to any requirement imposed under this subchapter or any provision thereof includes reference to the regulations of the Bureau under this subchapter or the provision thereof in question.

---

15 U.S.C. § 1691b

Promulgation of regulations by the bureau

(a) The Bureau shall prescribe regulations to carry out the purposes of this subchapter. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith.

(b) Such regulations may exempt from the provisions of this subchapter any class of transactions that are not primarily for personal, family, or household purposes, or business or commercial loans made available by a financial institution, except that a particular type within a class of such transactions may be exempted if the Bureau determines, after

making an express finding that the application of this subchapter or of any provision of this subchapter of such transaction would not contribute substantially to effecting the purposes of this subchapter.

(c) An exemption granted pursuant to subsection (b) shall be for no longer than five years and shall be extended only if the Bureau makes a subsequent determination, in the manner described by such paragraph, that such exemption remains appropriate.

(d) Pursuant to Bureau regulations, entities making business or commercial loans shall maintain such records or other data relating to such loans as may be necessary to evidence compliance with this subsection or enforce any action pursuant to the authority of this chapter. In no event shall such records or data be maintained for a period of less than one year. The Bureau shall promulgate regulations to implement this paragraph in the manner prescribed by chapter 5 of Title 5.

(e) The Bureau shall provide in regulations that an applicant for a business or commercial loan shall be provided a written notice of such applicant's right to receive a written statement of the reasons for the denial of such loan.

(f) Board Authority

Notwithstanding subsection (a), the Board shall prescribe regulations to carry out the purposes of this subchapter with respect to a person described in section 5519(a) of Title 12. These regulations may

contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith.

(g) Deference

Notwithstanding any power granted to any Federal agency under this subchapter, the deference that a court affords to a Federal agency with respect to a determination made by such agency relating to the meaning or interpretation of any provision of this subchapter that is subject to the jurisdiction of such agency shall be applied as if that agency were the only agency authorized to apply, enforce, interpret, or administer the provisions of this subchapter.

---

15 U.S.C. § 1691e

Civil liability

(a) Individual or class action for actual damages

Any creditor who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class.

(b) Recovery of punitive damages in individual and class action for actual damages; exemptions; maximum amount of punitive damages in individual actions; limitation on total recovery in class actions; factors determining amount of award

Any creditor, other than a government or governmental subdivision or agency, who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for punitive damages in an amount not greater than $10,000, in addition to any actual damages provided in subsection (a) of this section, except that in the case of a class action the total recovery under this subsection shall not exceed the lesser of $500,000 or 1 per centum of the net worth of the creditor. In determining the amount of such damages in any action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(c) Action for equitable and declaratory relief

Upon application by an aggrieved applicant, the appropriate United States district court or any other court of competent jurisdiction may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under this subchapter.

(d) Recovery of costs and attorney fees

In the case of any successful action under subsection (a), (b), or (c) of this section, the costs of the action, together with a reasonable attorney's fee as determined by the court, shall be added to any damages awarded by the court under such subsection.

(e) Good faith compliance with rule, regulation, or interpretation of Bureau or interpretation or approval by an official or employee of Bureau of Consumer Financial Protection duly authorized by Bureau

No provision of this subchapter imposing liability shall apply to any act done or omitted in good faith in conformity with any official rule, regulation, or interpretation thereof by the Bureau or in conformity with any interpretation or approval by an official or employee of the Bureau of Consumer Financial Protection duly authorized by the Bureau to issue such interpretations or approvals under such procedures as the Bureau may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(f) Jurisdiction of courts; time for maintenance of action; exceptions

Any action under this section may be brought in the appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction. No such action shall

be brought later than 5 years after the date of the occurrence of the violation, except that –

(1) whenever any agency having responsibility for administrative enforcement under section 1691c of this title commences an enforcement proceeding within 5 years after the date of the occurrence of the violation,

(2) whenever the Attorney General commences a civil action under this section within 5 years after the date of the occurrence of the violation,

then any applicant who has been a victim of the discrimination which is the subject of such proceeding or civil action may bring an action under this section not later than one year after the commencement of that proceeding or action.

(g) Request by responsible enforcement agency to Attorney General for civil action

The agencies having responsibility for administrative enforcement under section 1691c of this title, if unable to obtain compliance with section 1691 of this title, are authorized to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted. Each agency referred to in paragraphs (1), (2), and (9) of section 1691c(a) of this title shall refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of section 1691(a) of this title. Each such agency may refer the matter to the Attorney General

whenever the agency has reason to believe that 1 or more creditors has violated section 1691(a) of this title.

(h) Authority for Attorney General to bring civil action; jurisdiction

When a matter is referred to the Attorney General pursuant to subsection (g) of this section, or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this subchapter, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including actual and punitive damages and injunctive relief.

(i) Recovery under both subchapter and fair housing enforcement provisions prohibited for violation based on same transaction

No person aggrieved by a violation of this subchapter and by a violation of section 3605 of Title 42 shall recover under this subchapter and section 3612 of Title 42, if such violation is based on the same transaction.

(j) Discovery of creditor's granting standards

Nothing in this subchapter shall be construed to prohibit the discovery of a creditor's credit granting standards under appropriate discovery procedures in the court or agency in which an action or proceeding is brought.

(k) Notice to HUD of violations

Whenever an agency referred to in paragraph (1), (2), or (3) of section 1691c(a) of this title –

(1) has reason to believe, as a result of receiving a consumer complaint, conducting a consumer compliance examination, or otherwise, that a violation of this subchapter has occurred;

(2) has reason to believe that the alleged violation would be a violation of the Fair Housing Act [42 U.S.C.A. § 3601 et seq.]; and

(3) does not refer the matter to the Attorney General pursuant to subsection (g) of this section,

the agency shall notify the Secretary of Housing and Urban Development of the violation, and shall notify the applicant that the Secretary of Housing and Urban Development has been notified of the alleged violation and that remedies for the violation may be available under the Fair Housing Act.

12 C.F.R. § 202.2

Definitions.

For the purposes of this regulation, unless the context indicates otherwise, the following definitions apply.

(a) Account means an extension of credit. When employed in relation to an account, the word use refers only to open-end credit.

(b) Act means the Equal Credit Opportunity Act (title VII of the Consumer Credit Protection Act).

(c) Adverse action.

(1) The term means:

(i) A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;

(ii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts; or

(iii) A refusal to increase the amount of credit available to an applicant who has made an application for an increase.

(2) The term does not include:

(i) A change in the terms of an account expressly agreed to by an applicant.

(ii) Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account;

(iii) A refusal or failure to authorize an account transaction at point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts, or when the refusal is a denial of an application for an increase in the amount of credit available under the account;

(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(3) An action that falls within the definition of both paragraphs (c)(1) and (c)(2) of this section is governed by paragraph (c)(2) of this section.

(d) Age refers only to the age of natural persons and means the number of fully elapsed years from the date of an applicant's birth.

(e) Applicant means 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. For purposes of § 202.7(d), the term includes guarantors, sureties, endorsers, and similar parties.

(f) Application means an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested. The term application does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit. A completed application means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.

(g) Business credit refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in § 202.3(a)-(d).

(h) Consumer credit means credit extended to a natural person primarily for personal, family, or household purposes.

(i) Contractually liable means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) Credit means the right granted by a creditor to an applicant to defer payment of a debt, incur debt

and defer its payment, or purchase property or services and defer payment therefor.

(k) Credit card means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain money, property, or services on credit.

(l) Creditor means a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit. The term creditor includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of § 202.4(a) and (b), the term creditor also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation of the Act or this regulation committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

(m) Credit transaction means every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit

information; revocation, alteration, or termination of credit; and collection procedures).

(n) Discriminate against an applicant means to treat an applicant less favorably than other applicants.

(o) Elderly means age 62 or older.

(p) Empirically derived and other credit scoring systems –

(1) A credit scoring system is a system that evaluates an applicant's creditworthiness mechanically, based on key attributes of the applicant and aspects of the transaction, and that determines, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy. To qualify as an empirically derived, demonstrably and statistically sound, credit scoring system, the system must be:

(i) Based on data that are derived from an empirical comparison of sample groups or the population of creditworthy and noncreditworthy applicants who applied for credit within a reasonable preceding period of time;

(ii) Developed for the purpose of evaluating the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system (including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment);

(iii) Developed and validated using accepted statistical principles and methodology; and

(iv) Periodically revalidated by the use of appropriate statistical principles and methodology and adjusted as necessary to maintain predictive ability.

(2) A creditor may use an empirically derived, demonstrably and statistically sound, credit scoring system obtained from another person or may obtain credit experience from which to develop such a system. Any such system must satisfy the criteria set forth in paragraph (p)(1)(i) through (iv) of this section; if the creditor is unable during the development process to validate the system based on its own credit experience in accordance with paragraph (p)(1) of this section, the system must be validated when sufficient credit experience becomes available. A system that fails this validity test is no longer an empirically derived, demonstrably and statistically sound, credit scoring system for that creditor.

(q) Extend credit and extension of credit mean the granting of credit in any form (including, but not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open-end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity).

(r) Good faith means honesty in fact in the conduct or transaction.

(s) Inadvertent error means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid such errors.

(t) Judgmental system of evaluating applicants means any system for evaluating the creditworthiness of an applicant other than an empirically derived, demonstrably and statistically sound, credit scoring system.

(u) Marital status means the state of being unmarried, married, or separated, as defined by applicable state law. The term "unmarried" includes persons who are single, divorced, or widowed.

(v) Negative factor or value, in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that are not classified as elderly and are most favored by a creditor on the basis of age.

(w) Open-end credit means credit extended under a plan in which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device.

(x) Person means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(y) Pertinent element of creditworthiness, in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(z) Prohibited basis means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the Board.

(aa) State means any state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

---

12 C.F.R. § 202.7

Rules concerning extensions of credit.

(a) Individual accounts. A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) Designation of name. A creditor shall not refuse to allow an applicant to open or maintain an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

(c) Action concerning existing open-end accounts –

(1) Limitations. In the absence of evidence of the applicant's inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open-end account on the basis of the applicant's reaching a certain age or retiring or on the basis of a change in the applicant's name or marital status:

(i) Require a reapplication, except as provided in paragraph (c)(2) of this section;

(ii) Change the terms of the account; or

(iii) Terminate the account.

(2) Requiring reapplication. A creditor may require a reapplication for an open-end account on the basis of a change in the marital status of an applicant who is contractually liable if the credit granted was based in whole or in part on income of the applicant's spouse and if information available to the creditor indicates that the applicant's income may not support the amount of credit currently available.

(d) Signature of spouse or other person –

(1) Rule for qualified applicant. Except as provided in this paragraph, 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. A creditor shall not deem the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit.

(2) Unsecured credit. If an applicant requests unsecured credit and relies in part upon property that the applicant owns jointly with another person to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being relied upon in the event of the death or default of the applicant.

(3) Unsecured credit – community property states. If a married applicant requests unsecured credit and resides in a community property state, or if the applicant is relying on property located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default if:

(i) Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the credit requested under the creditor's standards of creditworthiness; and

(ii) The applicant does not have sufficient separate property to qualify for the credit requested without regard to community property.

(4) Secured credit. If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default, for example, an instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

(5) Additional parties. If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the credit requested, a creditor may request a cosigner, guarantor, endorser, or similar party. The applicant's spouse may serve as an additional party, but the creditor shall not require that the spouse be the additional party.

(6) Rights of additional parties. A creditor shall not impose requirements upon an additional party that the creditor is prohibited from imposing upon an applicant under this section.

(e) Insurance. A creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, disability, or other credit-related insurance is not available on the basis of the applicant's age.