

APPLYING LOPER BRIGHT, THE SEVENTH CIRCUIT HOLDS THAT ECOA PROTECTS PROSPECTIVE APPLICANTS

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The Seventh Circuit recently issued one of the first appellate decisions to apply the US Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024). In *Loper Bright*, the Supreme Court ended “Chevron” deference by a federal court to a federal agency's interpretation of ambiguous statutory language. In *CFPB v. Townstone Financial, Inc.*, 107 F.4th 786 (7th Cir. 2024), the Seventh Circuit held that the Equal Credit Opportunity Act (ECOA) provided the Consumer Financial Protection Bureau (CFPB) with the discretionary authority to promulgate the challenged aspect of ECOA's implementing regulation, Regulation B. Specifically, the Seventh Circuit ruled that the Regulation B prohibition of discrimination against prospective applicants for credit was consistent with the plain language and purpose of ECOA, including Congress's grant of agency authority to promulgate rules to prevent evasion of or to facilitate compliance with ECOA.

BACKGROUND

Among other things, 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 race, color, religion, national origin, sex or marital status, or age.”¹ In enacting ECOA, Congress provided agency authority to promulgate regulations to “effectuate the purposes of this title,” including to “prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith.”² After Congress transferred ECOA rulemaking authority to the CFPB,³ the CFPB issued a provision prohibiting creditors from making oral or written statements to “applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.”⁴

APPLYING *LOPER BRIGHT*

Under the Trump administration, the CFPB brought suit against mortgage lender Townstone Financial, Inc. The CFPB alleged that Townstone had discouraged prospective applicants from applying for credit on the basis of their race and thus had violated ECOA and Regulation B. The CFPB asserted that during radio infomercials sponsored by the defendant, its chief executive had made racially-derogatory remarks about minority neighborhoods in Chicago. Townstone moved to dismiss, asserting that the CFPB had overstepped its authority by including prospective applicants (versus those who had already applied for credit) within the ambit of Regulation B. The district court agreed with Townstone and dismissed the action. On appeal, the Seventh Circuit reversed.

The Seventh Circuit noted that it had applied *Loper Bright* in rendering its decision. Under that rubric, the court employed statutory interpretation principles including examining the language of the statute as a whole to determine Congress's intent in enacting ECOA. The Seventh Circuit held that the district court erred when it read the definition of “applicant” in isolation. When considering that term as part of the whole statute—including the statutory grant of authority to promulgate rules that prevent evasion of, and facilitate compliance with, ECOA—the Seventh Circuit concluded that grant of authority to the CFPB is both specific and broad enough to encompass a rule prohibiting discrimination against *prospective* applicants for credit. The court concluded that “Regulation B’s prohibition on the discouragement of prospective applications is consistent with the plain text of the ECOA.”

WHAT THIS MEANS

In *Loper Bright*, the Supreme Court overruled the *Chevron* doctrine that had required courts to defer to agencies’ reasonable interpretations of otherwise ambiguous statutes. A federal court must now exercise “independent judgment” in construing the meaning of a statute granting an agency authority to act. At the same time, *Loper Bright* acknowledged that in exercising independent judgment, a court may find that Congress authorized an agency to “exercise a degree of discretion” in promulgating rules. Thus, *Loper Bright* recognized Congress’s ability to delegate authority within constitutional limits for an agency to “fill in the gaps” of a statute, by, for example, defining a term to fulfill the purpose of the statute. The Seventh Circuit acted on this aspect of *Loper Bright* when it held that “the term ‘applicant’ cannot be read in a crabbed fashion that frustrates the obvious statutorily articulated purpose of the statute to prohibit discrimination ‘with respect to any aspect of a credit transaction’ [and that a] ‘credit transaction’ had to include actions taken by a creditor before an applicant ultimately submits his or her credit application.”

CONCLUSION

Townstone is likely the first of many decisions to apply *Loper Bright* in challenges to allegedly unauthorized agency action. The Seventh Circuit’s reasoning underscores the importance of understanding the rules of statutory interpretation and the overarching reasoning of *Loper Bright* that places emphasis on determining Congress’s purpose in enacting a statute. According to the Seventh Circuit, if the intent of Congress includes the delegation of agency authority to prevent evasion or facilitate compliance with the statute, the agency may have some measure of flexibility in promulgating regulations to implement that congressional intent. Future courts are likely to explore the constitutional limits for an agency to “fill in the gaps” of a statute.

FOOTNOTES

¹ 15 U.S.C. § 1691(a).

² 15 U.S.C. § 1691(b).

³ When Congress enacted ECOA in 1974, it delegated rulemaking authority to the Federal Reserve Board. In 2010, as part of the Dodd-Frank Act, Congress transferred rulemaking authority to the CFPB.

⁴ 12 CFR Part 1002.2(z).

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