

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN BANKERS ASSOCIATION,)	
)	
Plaintiff,)	
)	
v.)	No. 1:16-cv-02394-KBJ
)	
NATIONAL CREDIT UNION)	
ADMINISTRATION,)	
)	
Defendant.)	

PLAINTIFF’S NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff American Bankers Association (“ABA”) respectfully submits this notice of supplemental authority to call to the Court’s attention two reports recently released by Defendant National Credit Union Administration (“NCUA”) that are pertinent to the parties’ pending cross-motions for summary judgment. *See* ECF Nos. 14, 19. The reports are attached hereto as Exhibits 1 and 2.¹

As relevant here, the attached reports summarize NCUA’s July 2017 (Exhibit 1) and August 2017 (Exhibit 2) decisions on applications of community credit unions to expand their fields of membership. The reports demonstrate that, in the two months since ABA’s reply brief was filed, NCUA has approved multiple field of membership expansions pursuant to the Final Rule, 81 Fed. Reg. 88,412 (Dec. 7, 2016). NCUA’s approvals include fields of membership that

¹ Exhibits 1 and 2 also are available online. *See* National Credit Union Administration, *Monthly Activity Report - Insurance Related Activity*, <https://www.ncua.gov/analysis/Pages/chartering-and-mergers/insurance-activity-reports.aspx>.

are not limited to a single “well-defined local community, neighborhood, or rural district,” as required by the Federal Credit Union Act, 12 U.S.C. § 1759(b)(3).

For example, NCUA recently determined that the Utah Community Credit Union may serve the entire Salt Lake City-Provo-Orem combined statistical area, an enormous area that includes 2.4 million inhabitants. *See* Ex. 2, at 6/42. *See id.* This field of membership is *identical* to a field of membership described and illustrated in ABA’s memorandum in support of its motion as an example of a field of membership permitted by NCUA’s Final Rule that exceeds any reasonable definition of “a well-defined local community.” *See* ECF No. 14-1, at 26–27. Notably, the newly-approved field of membership includes the same area that another federal court previously rejected as too large to be deemed “a well-defined local community”—*and adds four more large counties and one million additional people.* *See id.* (citing *Am. Bankers Ass’n v. NCUA*, 347 F. Supp. 26 1061, 1067, 1069 (D. Utah 2004)).

In addition, NCUA has authorized credit unions to serve expanded “rural districts” pursuant to the Final Rule that cover vast areas and include largely *urban* populations. For example:

- *Potlatch No. 1 Federal Credit Union* was approved to serve a field of membership of 999,994 people—almost exactly at the new 1 million-person limit for community credit unions serving a “rural district.” The field of membership is spread across an enormous area of Washington, Oregon, Idaho, and Montana that is *larger than all six New England states combined*, and incorporates multiple urban areas, including Missoula, Montana (Montana’s second-largest city), Coeur d’Alene and Lewiston, Idaho, and Walla Walla, Washington. *See* Ex. 2, at 7/42.²

² *See* Office of Mgmt. & Budget, Exec. Office of the President, OMB Bull. No. 15-01, Revised Delineations of Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and Guidance on Uses of the Delineations of These Areas, Appendix at 29, 39, 41, 52 (2015), <https://obamawhitehouse.archives.gov/sites/default/files/omb/bulletins/2015/15-01.pdf> [hereinafter OMB Bull. No. 15-01]; U.S. Census, *QuickFacts*, <https://www.census.gov/quickfacts/fact/table/US/PST045216> (land area of rural district component counties totals 64,657 square miles and land area of New England states totals 62,688 square miles).

- *Visions Federal Credit Union* was approved to serve a field of membership of 958,350 people. The field of membership covers a large portion of New York and a portion of Pennsylvania and incorporates the entire Binghamton, Ithaca, and Elmira metropolitan statistical areas and a portion of the Syracuse metropolitan statistical area. These urban areas account for more than half the population of this “rural district.” *See Ex. 2*, at 3/42.³
- *Pioneer West Virginia Federal Credit Union* was approved to serve a field of membership of 983,549 people, covering a large and oddly-shaped portion of West Virginia (with a donut hole in the middle) plus portions of Kentucky and Ohio. The field of membership incorporates West Virginia’s two largest urban areas: Charleston and Huntington. Urban areas account for more than half the population of the purported “rural district.” *See Ex. 2*, at 5/42.⁴
- *North Country Federal Credit Union* was approved to serve a field of membership of 632,373 people, covering roughly the northern half of Vermont and New Hampshire and an adjacent portion of New York. The field of membership of this “rural district” incorporates eight of Vermont’s nine cities, including its largest city, Burlington, and the state capital, Montpelier. *See Ex. 1*, at 3/14.⁵

NCUA’s recent actions demonstrate that it continues to push the definition of a single “local community, neighborhood, or rural district” beyond the “bounds of reasonable interpretation.” *Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2442 (2014).

³ *See* U.S. Census, *American FactFinder*, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2016_PEPANNRES&src=pt (following the following steps: Add/Remove Geographies, Select Geographic Type “County,” Select Counties Listed in Ex. 2, at 3/42 as Field of Membership); OMB Bull. No. 15-01, at 26, 32, 36, 50 (listing counties in Binghamton, Elmira, Ithaca, and Syracuse metropolitan statistical areas).

⁴ *See* U.S. Census, *American FactFinder*, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2016_PEPANNRES&src=pt (following the following steps: Add/Remove Geographies, Select Geographic Type “County,” Select Counties Listed in Ex. 2, at 5/42 as Field of Membership); OMB Bull. No. 15-01, at 25, 28, 35 (listing counties in Beckley, WV, Charleston, WV, and Huntington-Ashland, WV-KY-OH metropolitan statistical areas).

⁵ *See* U.S. Census, *American FactFinder*, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2016_PEPANNRES&src=pt (following the following steps: Add/Remove Geographies, Select Geographic Type “Estimates Universe Places,” “Vermont” to show all Vermont cities; all but Rutland are in field of membership).

Dated: October 3, 2017

Respectfully submitted,

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