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Compliance Bulletin 18-11

D.C. Circuit Court Vacates Parts of NCUA's New Field of Membership Rule

On Thursday, March 29, 2018 the D.C. Circuit Court issued a ruling in the case of American Bankers Association v. National Credit Union Administration. In this case, the American Bankers Association (ABA) challenged four of the updated definitions the National Credit Union Association (NCUA) made in their 2016 updated Field of Membership (FOM) rule. The newly updated definitions expanded the scope of local communities and rural districts.

The four rule changes that the ABA challenged were (1) credit unions can serve areas within a Core-Based Statistical Area that do not include the core; (2) automatically characterizing any portion of a Combined Statistical Area as belonging to a local community as long as the portion contains no more than 2.5 million people; (3) credit unions serving a portion of a Single Political Jurisdiction, Core-Based Statistical Area, or Combined Statistical Area may add an adjacent area if the credit union can demonstrate that the adjacent area is part of the same local community; and (4) increasing the population limit for rural districts to one million people.

With parts did the judge strike down?

The D.C. Circuit Court judge struck down both the automatically characterizing any portion of a Combined Statistical Area as belonging to a local community as long as that portion does not exceed the 2.5 million population limit.

And the judge struck down the increasing the population limit for rural districts to one million.

What parts did the judge uphold?

The D.C. Circuit Court judge upheld both the Core-Based Statistical Area and adding adjacent areas.

Under the 2016 NCUA rule, any contiguous portion of a Core-Based Statistical Area automatically qualifies as part of a local community as long as that portion's population does not

exceed 2.5 million people. The requirement to include the core itself in that portion is no longer there.

Credit unions may continue to apply to add areas adjacent to a portion of a Single Political Jurisdiction or Core-Based Statistical Area, that they already serve, subject to the 2.5 million population limit. Credit unions will need to continue to show that the adjacent area is part of the same local community with “objective documentation” showing common interests or interaction among residents on both sides of the statistical area’s perimeter.

What is the NCUA going to do now?

The ruling just came out, and the NCUA has indicated that it is studying the ruling. At this point in time it is too early to determine what steps the NCUA may take.

Since the ruling was in the circuit court, the NCUA may decide to appeal it. Or, the NCUA may decide to let the judge’s ruling stand and put forth new rule making that could still expand the FOM options for credit unions, but take into considerations that arguments put forth by the judge.

We have a state charter, does this apply to us?

The decision only applies to the NCUA’s Field of Membership rule and has no impact on state chartered credit unions.

We are a Federal Credit Union and took advantage of the expanded FOM, what should we do now?

Credit unions who expanded under either the combined statistical areas or expanded rural definition may wish to take a look at revising their plans. There is still the possibility that the NCUA will appeal the ruling to have a panel review Judge Friedrich’s opinion, but having a plan in place to make changes may be necessary.

Credit unions which used combined statistical area as an approach for expanding their FOM may have the ability to modify or submit a revised plan to the NCUA using the adjacent area approach. The credit union will need to review the areas they expanded into under the combined statistical area to determine if they can provide a narrative showing compelling evidence of interaction or common interests. Credit unions may wish to have a conversation with our regulatory advocacy team to discuss options. In addition, possibly the NCUA Region 5 might be able to give insight in options the credit union could take at this juncture.

Credit unions that took advantage of the increase in size of the rural district will have more work to do. There are still options including using low income designations. Similarly, credit unions may wish to have conversations with our regulatory advocacy team and the NCUA to plan the next steps they will need to take.

Credit unions that were currently looking at expanding using a rural community charter or combined statistical area will want to revisit their plans. There are still ways to expand your charters, just the bar has been raised. Please feel free to contact the NWCUA. We are here to assist our members and can help with FOMs that will keep you competitive.

Where can I read the ruling myself?

You can view the D.C. Circuit Court ruling from Thursday March 29, 2018 [here](#).

You can view the 2016 FOM changes [here](#).

If you have questions about the D.C. Circuit Court Ruling on the NCUA's FOM Rule, contact the NWCUA's compliance team at 800.546.4465, or compliance@nwcua.org

#CUobsessed

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