

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

AMERICAN BANKERS ASSOCIATION)
1120 Connecticut Ave NW)
Washington, D.C. 20036,)
)
Plaintiff,)

v.)

No.: 1:16-cv-02394-KBJ

NATIONAL CREDIT UNION)
ADMINISTRATION,)
1775 Duke St)
Alexandria, VA 22314-3428)
)
Defendant.)

ANSWER

Defendant National Credit Union Administration (“NCUA” or “Defendant”), through its undersigned counsel, hereby answers American Bankers Association’s (“Plaintiff”) Complaint in the above-captioned matter as follows.

The unnumbered introductory paragraph consists of legal conclusions to which no response is required but, to the extent a response is required, it is denied. Defendant further states that this paragraph does not set forth a claim for relief or aver facts in support of a claim to which an answer is required.¹

Defendant neither admits nor denies the heading prior to paragraph 1.

1. In response to this paragraph, Defendant denies that the rule Plaintiff challenges in this action—Chartering and Field of Membership Manual, 81 Fed. Reg. 88,412 (Dec. 7, 2016) (“Final Rule”)—“expand[s] the universe of members eligible to join a single federally-chartered

¹ Throughout this answer, as to paragraphs in which Plaintiff’s Complaint refers to credit unions in discussing the Final Rule at issue, the paragraph is denied to the extent it refers to credit unions that are not federally chartered.

credit union well beyond the limits established by Congress,” and further states that the first sentence constitutes Plaintiff’s characterization of this lawsuit, to which no response is required. Defendant admits that the Final Rule is attached as an exhibit to Plaintiff’s Complaint.

2. This paragraph consists of Plaintiff’s legal conclusions and characterization of the Federal Credit Union Act (“FCUA”) and a note accompanying 12 U.S.C. § 1751, to which no response is required. To the extent a response is required, the allegations are denied.

3. The first sentence of this paragraph is a legal conclusion to which no response is required. The remainder of this paragraph consists of Plaintiff’s characterization of a note accompanying 12 U.S.C. § 1751 and a judicial decision. Defendant avers that these sources speak for themselves, respectfully refers the Court to these sources for a full and accurate description of their contents, and denies this paragraph to the extent that it is inconsistent with these sources.

4. This paragraph consists of Plaintiff’s legal conclusions and characterization of 12 U.S.C. § 1759(b), to which no response is required. To the extent a response is required, the allegations are denied.

5. This paragraph consists of Plaintiff’s characterization of a statute, to which no response is required. Defendant respectfully refers the Court to that statute for a full and accurate description of its contents.

6. This paragraph consists of Plaintiff’s legal conclusions to which no response is required but, to the extent a response is required, it is denied.

7. The first sentence of this paragraph—as well as Plaintiff’s characterization of the Final Rule as expanding the definition of “rural district” beyond reasonable limits—consists of Plaintiff’s legal conclusions to which no response is required but, to the extent a response is required, it is denied. The remainder of this paragraph consists of Plaintiff’s characterization of

the Final Rule. Defendant avers that the Final Rule speaks for itself, denies that this paragraph constitutes a full and accurate description of the Final Rule, respectfully refers the Court to the Final Rule for a full and accurate description of its contents, and denies this paragraph to the extent it is inconsistent with the Final Rule.

8. The first sentence of this paragraph is a legal conclusion to which no response is required but, to the extent a response is required, it is denied. The remainder of this paragraph consists of Plaintiff's discussion of two judicial decisions. Plaintiff's discussion of these decisions—neither of which involved the Final Rule at issue here—is irrelevant to this action, and Defendant, therefore, denies that these allegations constitute a short and plain statement of the claim showing that Plaintiff is entitled to relief under Fed. R. Civ. P. 8(a)(2). Defendant further denies that this paragraph constitutes a complete and accurate description of these judicial decisions and respectfully refers the Court to these decisions for a full and accurate description of their contents.

9. This paragraph consists of Plaintiff's legal conclusions to which no response is required but, to the extent a response is required, it is denied.

10. Defendant admits that Plaintiff purports to bring this action under the FCUA and Administrative Procedure Act ("APA") but denies that the Final Rule violates the APA or is contrary to the FCUA, denies that the Final Rule is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, and states Plaintiff is entitled to no relief in this action.

Defendant neither admits nor denies the heading between paragraphs 10 and 11.

11. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph.

12. Admit, except aver that NCUA is an independent agency.

Defendant neither admits nor denies the heading between paragraphs 12 and 13.

13. Defendant admits that Plaintiff purports to bring this action under the FCUA and the APA but states that the remainder of this paragraph consists of legal conclusions to which no response is required. Defendant denies that Plaintiff is entitled to any relief in this action.

14. This paragraph consists of a legal conclusion to which no response is required.

15. This paragraph consists of a legal conclusion to which no response is required.

16. This paragraph consists of legal conclusions to which no response is required.

17. In response to this paragraph, Defendant states that Plaintiff's claim that "numerous credit unions filed comments urging NCUA to allow" a particular expansion consists of Plaintiff's characterization of certain comments allegedly submitted during the rulemaking process. Defendant avers that any such comments speak for themselves and respectfully refers the Court to the administrative record in this matter, a certified list of which Defendant will file with the Court. Defendant lacks knowledge and information sufficient to form a belief as to the truth of Plaintiff's assertion that, at the time the Complaint was filed, "multiple federally-chartered credit unions [were] already planning to take prompt advantage of the Final Rule." The sentence which begins "The Final Rule" consists of Plaintiff's characterization of the Final Rule to which no response is required but, to the extent a response is required, it is denied; Defendant respectfully refers the Court to the Final Rule for a full and accurate description of its contents. The remainder of this paragraph consists of Plaintiff's legal conclusions to which no response is required but, to the extent a response is required, Defendant denies the remaining allegations in this paragraph.

18. This paragraph consists of Plaintiff's legal conclusions to which no response is required but, to the extent a response is required, it is denied.

Defendant neither admits nor denies the two headings between paragraphs 18 and 19.

19. This paragraph consists of Plaintiff's characterization of the FCUA. Defendant respectfully refers the Court to the FCUA for a full and accurate description of its contents.

20. This paragraph consists of Plaintiff's characterization of a note accompanying 12 U.S.C. § 1751, 12 U.S.C. § 1768, a document on NCUA's website, and a document on the White House website. Defendant states that these materials speak for themselves, respectfully refers the Court to them for a full and accurate description of their contents, and denies this paragraph to the extent it is inconsistent with these materials.

21. The last sentence of this paragraph is a legal conclusion to which no response is required but, to the extent a response is required, it is denied. Plaintiff's assertion that Congress has granted credit unions highly favorable tax treatment is a legal conclusion to which no response is required. The remainder of this paragraph consists of Plaintiff's characterization and quotation of a Supreme Court opinion, a Senate Report, and a note accompanying 12 U.S.C. § 1751. Defendant states that these materials speak for themselves, respectfully refers the Court to them for a full and accurate description of their contents, and denies this paragraph to the extent it is inconsistent with these materials.

22. This paragraph consists of Plaintiff's characterization and quotation of various provisions of the FCUA and a note accompanying 12 U.S.C. § 1751. Defendant states that these materials speak for themselves, respectfully refers the Court to them for a full and accurate description of their contents, and denies this paragraph to the extent it is inconsistent with these materials.

23. Defendant denies this paragraph to the extent it alleges that any expansion of credit union activity since 1995 is somehow inconsistent with the sources cited in the previous paragraphs or with any other provision of law, and further denies this paragraph to the extent it

alleges that credit union expansion is a direct result of taxpayer subsidies. Defendant further states that this paragraph and the accompanying footnote consist of allegations that are irrelevant to this action, and Defendant, therefore, denies that these allegations constitute a short and plain statement of the claim showing that Plaintiff is entitled to relief under Fed. R. Civ. P. 8(a)(2).

Defendant neither admits nor denies the heading between paragraphs 23 and 24.

24. This paragraph consists of Plaintiff's characterization of this lawsuit and Plaintiff's legal conclusion to which no response is required but, to the extent a response is required, it is denied.

25. This paragraph consists of Plaintiff's characterization of a statute, to which no response is required. Defendant respectfully refers the Court to that statute for a full and accurate description of its contents.

The heading between paragraphs 25 and 26 consists of a legal conclusion to which no response is required.

26. This paragraph consists of Plaintiff's characterization of a Supreme Court decision. Defendant states that that decision speaks for itself, respectfully refers the Court to that decision for a full and accurate description of its contents, and denies this paragraph to the extent it is inconsistent with that decision.

27. This paragraph consists of Plaintiff's characterization of the Credit Union Membership Access Act ("CUMAA"). Defendant states that the CUMAA speaks for itself, respectfully refers the Court to the CUMAA for a full and accurate description of its contents, and denies this paragraph to the extent it is inconsistent with CUMAA.

28. This paragraph consists of Plaintiff's characterization and quotation of an agency document. Defendant states that this document speaks for itself, respectfully refers the Court to

that document for a full and accurate description of its contents, and denies this paragraph to the extent it is inconsistent with that document.

The heading between paragraphs 28 and 29 consists of legal argument to which no response is required but, to the extent a response is required, NCUA denies that its actions were attempts to weaken the field of membership requirement for community credit unions. To the extent this heading characterizes the judicial decisions discussed in the subsequent paragraphs, Defendant further states that those decisions speak for themselves, respectfully refers the Court to those decisions for a full and accurate description of their contents, and denies this heading to the extent it is inconsistent with those decisions. Defendant further states that the argument in this heading is irrelevant to this action, and Defendant, therefore, denies that this heading constitutes a short and plain statement of the claim showing that Plaintiff is entitled to relief under Fed. R. Civ. P. 8(a)(2).

Defendant states that paragraphs 29-33—which discuss two judicial decisions unrelated to this action—are irrelevant to this lawsuit and Defendant, therefore, denies that these paragraphs constitute a short and plain statement of the claim showing Plaintiff is entitled to relief under Fed. R. Civ. P. 8(a)(2). Defendant nonetheless responds to each paragraph below.

29. This paragraph is irrelevant to this lawsuit and Defendant, therefore, denies that this paragraph constitutes a short and plain statement of the claim showing that Plaintiff is entitled to relief under Fed. R. Civ. P. 8(a)(2). Defendant further states that this paragraph consists of legal conclusions to which no response is required but, to the extent a response is required, it is denied.

30. This paragraph is irrelevant to this lawsuit and Defendant, therefore, denies that this paragraph constitutes a short and plain statement of the claim showing that Plaintiff is entitled to relief under Fed. R. Civ. P. 8(a)(2). The second sentence of this paragraph consists of legal

conclusions to which no response is required but, to the extent a response is required, it is denied. The first sentence of this paragraph consists of Plaintiff's characterization of two judicial decisions. Defendant states that those decisions speak for themselves, respectfully refers the Court to those decisions for a full and accurate description of their contents, and denies this paragraph to the extent it is inconsistent with those decisions.

31. This paragraph consists of Plaintiff's discussion of a judicial decision. This paragraph is irrelevant to this lawsuit and Defendant, therefore, denies that this paragraph constitutes a short and plain statement of the claim showing that Plaintiff is entitled to relief under Fed. R. Civ. P. 8(a)(2). Defendant further states that this decision speaks for itself, respectfully refers the Court to that decision for a full and accurate description of its contents, and denies this paragraph to the extent it is inconsistent with that decision.

32. This paragraph consists of Plaintiff's discussion of a judicial decision. This paragraph is irrelevant to this lawsuit and Defendant, therefore, denies that this paragraph constitutes a short and plain statement of the claim showing that Plaintiff is entitled to relief under Fed. R. Civ. P. 8(a)(2). Defendant further states that this decision speaks for itself, respectfully refers the Court to that decision for a full and accurate description of its contents, and denies this paragraph to the extent it is inconsistent with that decision.

33. This paragraph is irrelevant to this lawsuit and Defendant, therefore, denies that this paragraph constitutes a short and plain statement of the claim showing that Plaintiff is entitled to relief under Fed. R. Civ. P. 8(a)(2). The first sentence of this paragraph consists of Plaintiff's characterization of two judicial decisions, to which no response is required, and Defendant further denies that Plaintiff's characterization of the two referenced decisions in this sentence constitutes a full and complete account of those decisions. As to the remainder of the paragraph, Defendant

states that the referenced decisions speak for themselves, respectfully refers the Court to those decisions for a full and accurate description of their contents, and denies this paragraph to the extent it is inconsistent with those decisions.

The heading between paragraphs 33 and 34 consists of legal conclusions to which no response is required but, to the extent a response is required, it is denied.

34. This paragraph consists of legal conclusions to which no response is required but, to the extent a response is required, it is denied.

35. This paragraph consists of Plaintiff's characterization of a statutory provision, a Supreme Court decision, and an agency rule. Defendant states that these sources speak for themselves, respectfully refers the Court to these sources for a full and accurate description of their contents, and denies this paragraph to the extent it is inconsistent with those sources.

36. This paragraph consists of Plaintiff's discussion of an agency document. Defendant states that this document speaks for itself, respectfully refers the Court to this document for a full and accurate description of its contents, and denies this paragraph to the extent it is inconsistent with that document.

37. This paragraph consists of Plaintiff's discussion of an agency document. Defendant states that this document speaks for itself, respectfully refers the Court to this document for a full and accurate description of its contents, and denies this paragraph to the extent it is inconsistent with that document.

38. Plaintiff's characterization of a proposed rulemaking as "significantly expand[ing] the field of membership for community credit unions" is a legal conclusion to which no response is required but, to the extent a response is required, it is denied. To the extent this paragraph characterizes the proposed rule, Defendant states that this document speaks for itself, respectfully

refers the Court to this document for a full and accurate description of its contents, and denies this paragraph to the extent it is inconsistent with the proposed rule. To the extent this paragraph consists of Plaintiff's characterization of certain alleged comments submitted during the rulemaking process, Defendant avers that any such comments speak for themselves and respectfully refers the Court to the administrative record in this matter, a certified list of which Defendant will file with the Court. Defendant further states that the portions of Plaintiff's comments quoted in this paragraph are legal conclusions to which no response is required but, to the extent a response is required, they are denied.

39. This paragraph consists of legal conclusions to which no response is required but, to the extent a response is required, it is denied.

40. This paragraph consists of legal conclusions to which no response is required but, to the extent a response is required, it is denied.

41. This paragraph consists of legal conclusions to which no response is required but, to the extent a response is required, it is denied.

The heading between paragraphs 41 and 42 consists of legal conclusions to which no response is required but, to the extent a response is required, it is denied.

42. This paragraph consists of Plaintiff's characterization of the Final Rule, to which no response is required but, to the extent a response is required, it is denied. Defendant respectfully refers the Court to the Final Rule for a full and accurate description of its contents.

43. The first sentence of this paragraph quotes NCUA's notice of proposed rulemaking. Defendant denies that this paragraph constitutes a complete and accurate discussion of the topic at issue, and respectfully refers the court to the notice of proposed rulemaking for a full and accurate

description of its contents. The second sentence of this paragraph consists of a legal conclusion to which no response is required but, to the extent a response is required, it is denied.

44. As to the first sentence of this paragraph, Defendant admits that some CSAs have populations in the millions and encompass portions of multiple states. Plaintiff's claim that many CSAs "unite far-flung communities" is a legal conclusion to which no response is required but, to the extent a response is required, it is denied. As to the second sentence of this paragraph, Defendant states that Plaintiff's characterization of a CSA as including "a large portion of Northern Virginia" is too vague for Defendant to formulate a response. Defendant otherwise admits the allegations in the second and third sentences of this paragraph, but states that, given the Final Rule's 2.5 million person membership cap, Plaintiff's discussion is incomplete and of limited relevance to this action. The final sentence of this paragraph is a legal conclusion to which no response is required but, to the extent a response is required, it is denied.

The map between paragraphs 44 and 45 does not set forth a claim for relief or aver facts in support of a claim to which an answer is required.

45. As to the clause prior to the three bullets, Plaintiff's characterization of certain CSAs as including "far more than a single, well defined local community" is a legal conclusion to which no response is required but, to the extent a response is required, it is denied.

- Defendant admits the allegations in the first bullet accompanying this paragraph but states that, given the Final Rule's 2.5 million person membership cap, Plaintiff's discussion is incomplete and of limited relevance to this action.
- Defendant admits the allegations in the second bullet accompanying this paragraph but states that, given the Final Rule's 2.5 million person membership cap, Plaintiff's discussion is incomplete and of limited relevance to this action.

- Defendant admits the allegations in the third bullet accompanying this paragraph but states that, given the Final Rule's 2.5 million person membership cap, Plaintiff's discussion is incomplete and of limited relevance to this action.

46. This paragraph consists of Plaintiff's characterization of the Final Rule and its legal conclusions to which no response is required but, to the extent a response is required, it is denied. The footnote accompanying this paragraph consists of Plaintiff's characterization of a proposed rule dated November 9, 2016. In response, Defendant states that this proposed rule is irrelevant to this action but refers the Court to that proposed rule for a complete and accurate description of its contents.

47. This paragraph consists of legal conclusions to which no response is required but, to the extent a response is required, it is denied.

48. The first and last sentences of this paragraph consist of legal conclusions to which no response is required but, to the extent a response is required, they are denied. The second sentence contains Plaintiff's quotation of an agency document, to which no response is required. Defendant respectfully refers the Court to that document for a complete and accurate description of its contents.

The header between paragraphs 48 and 49 consists of legal conclusions to which no response is required but, to the extent a response is required, it is denied.

49. As to the portion of this paragraph that quotes a notice of proposed rulemaking, NCUA states that this document speaks for itself and respectfully refers the Court to that document for a full and accurate description of its contents. NCUA admits the remaining allegations in this paragraph.

50. This paragraph consists of Plaintiff's characterization of an agency document, to which no response is required. Defendant respectfully refers the Court to that document for a complete and accurate description of its contents.

51. The first sentence of this paragraph is a characterization of the Final Rule; NCUA states that the Final Rule speaks for itself and respectfully refers the Court to the Final Rule for a full and accurate description of its contents. The remainder of this paragraph consists of legal conclusions to which no response is required but, to the extent a response is required, it is denied.

52. Defendant admits that federal credit unions are not required to comply with the Community Reinvestment Act. Plaintiff's characterization of the purpose of the Community Reinvestment Act is a legal conclusion to which no response is required. The remainder of this paragraph consists of legal conclusions to which no response is required but, to the extent a response is required, it is denied.

53. The first sentence of this paragraph is a characterization of the Final Rule; NCUA states that the Final Rule speaks for itself and respectfully refers the Court to the Final Rule for a full and accurate description of its contents. The remainder of this paragraph consists of legal conclusions to which no response is required but, to the extent a response is required, it is denied.

The heading between paragraphs 53 and 54 consists of legal conclusions to which no response is required but, to the extent a response is required, it is denied.

54. This paragraph consists of Plaintiff's characterization of a statute, to which no response is required. Defendant respectfully refers the Court to that statute for a full and accurate description of its contents.

55. This paragraph contains a characterization of—and quotations from—an NCUA proposed rule and an earlier final rule. Defendant states that these sources speak for themselves,

denies that Plaintiff's characterization constitutes a complete and accurate description of these sources, and respectfully refers the Court to these sources for a complete and accurate description of their contents.

56. This paragraph consists of Plaintiff's description of the Final Rule. Defendant states that the Final Rule speaks for itself, denies that Plaintiff's characterization constitutes a complete and accurate description of the Final Rule's content, and respectfully refers the Court to the Final Rule for a full and accurate description of its contents.

57. This paragraph consists of legal argument to which no response is required but, to the extent a response is required, Defendant denies the allegations in this paragraph.

58. This paragraph consists of legal argument to which no response is required.

The heading between paragraphs 58 and 59 consists of legal conclusions to which no response is required but, to the extent a response is required, it is denied.

59. This paragraph consists of Plaintiff's characterization of the Final Rule and an earlier 2003 rule. Defendant states that these sources speak for themselves, and respectfully refers the Court to these sources for a full and accurate description of their contents.

60. This paragraph consists of legal conclusions to which no response is required but, to the extent a response is required, Defendant denies the allegations in this paragraph.

61. This paragraph consists of legal conclusions to which no response is required but, to the extent a response is required, Defendant denies the allegations in this paragraph.

As to the headings between paragraphs 61 and 62, Defendant admits that Plaintiff purports to bring a claim under the APA and FCUA, but denies that Defendant acted in excess of statutory authority and denies that Plaintiff is entitled to any relief.

62. Defendant incorporates by reference its responses to paragraphs 1-61 as if fully set forth herein.

63. This paragraph consists of legal conclusions to which no response is required.

64. This paragraph consists of legal conclusions to which no response is required but, to the extent a response is required, Defendant denies the allegations in this paragraph.

65. This paragraph consists of legal conclusions to which no response is required but, to the extent a response is required, Defendant denies the allegations in this paragraph and denies that Plaintiff is entitled to any relief.

As to the headings between paragraphs 65 and 66, Defendant admits that Plaintiff purports to bring a claim under the APA, but denies that Defendant acted in an arbitrary or capricious fashion and denies that Plaintiff is entitled to any relief.

66. Defendant incorporates by reference its responses to paragraphs 1-65 as if fully set forth herein.

67. This paragraph consists of legal conclusions to which no response is required.

68. This paragraph consists of legal conclusions to which no response is required but, to the extent a response is required, Defendant denies the allegations in this paragraph.

69. This paragraph consists of legal conclusions to which no response is required but, to the extent a response is required, Defendant denies the allegations in this paragraph and denies that Plaintiff is entitled to any relief.

The Section following paragraph 69 is a Prayer for Relief, to which no response is required. To the extent a response is required, Defendant denies that Plaintiff is entitled to any relief.

Defendant hereby denies all allegations in the Complaint not expressly admitted or denied or otherwise responded to.

WHEREFORE, having fully answered the Complaint, Defendant asserts that Plaintiff is not entitled to the relief requested, or to any relief whatsoever, and requests that this action be dismissed in its entirety with prejudice and that Defendant be given such other relief as this Court deems proper, including costs and disbursements.

Dated: March 10, 2017

Respectfully Submitted,

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