

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

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

NOTICE

On March 29, 2018, this Court issued a memorandum opinion and order granting in part and denying in part each party’s motion for summary judgment and vacating two aspects of the December 7, 2016 final rule at issue in this case (“Final Rule”). *See* ECF No. 34.¹ The parties’ briefing did not address—and the Court accordingly did not discuss—the effect of its ruling on community charter expansions granted prior to the Court’s ruling, and on individual members who enrolled with an affected credit union prior to the Court’s decision.

While the Court’s ruling remains in effect, Defendant will not grant any new community charters pursuant to the two vacated portions of the Final Rule. Defendant has also instructed affected credit unions not to accept any new members who would only be eligible for membership in the relevant credit union based on the vacated portions of the Final Rule.

By contrast, Defendant does not believe that the Court’s order should be read to mandate

¹ Defendant is currently considering whether to appeal the portions of that order adverse to the Government, and nothing in this Notice should be read as a waiver of its appeal rights.

that affected credit unions de-list members who became members prior to the Court's decision.² Such a remedy would serve only to punish individuals and entities who did nothing wrong and who were not parties in this litigation. In addition to raising possible due process concerns, retroactive de-listing would also be inconsistent with Congress's stated intent that, once an individual becomes a member of a credit union, the individual remains a member unless and until they choose to withdraw. *See* 12 U.S.C. § 1759(e)(2). And it would be highly disruptive in the event that the Court of Appeals ultimately reverses this Court's opinion, in whole or in part. Finally, an approach that preserves the rights of preexisting members is consistent with prior practice when an individual community charter is set aside. *See ABA et al. v. NCUA et al.*, No. 1:cv-05-2247 (M.D. Pa.), ECF No. 78 at 2 (agreeing with parties' proposal that "Current members of the defendant Credit Unions . . . who would not otherwise be eligible for membership . . . may remain members of the Credit Unions").

Defendant has conferred with counsel for Plaintiff. Although Plaintiff disagrees with several of the assertions made in the preceding paragraph, at this time Plaintiff has no plans to seek an order requiring credit unions to de-list members who became members on or before April 4.

In light of the above, and because the Court's order does not mandate any particular remedial measures, Defendant does not believe that any further action by the Court is required. In an abundance of caution, however, Defendant nonetheless files this Notice to apprise the Court of its intended implementation of the Court's decision.

² The Court issued its decision on March 29, after which Defendant required a brief period to determine how to implement that decision; Defendant orally advised each credit union of the decision on March 30 and issued written guidance on April 4. To avoid the disruption of unwinding banking relationships that may have been established during this period, Defendant intends to advise credit unions that members who enrolled on or before April 4 may remain members.

Dated: April 19, 2018

Respectfully Submitted,

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/s/ Andrew M. Bernie
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