No. 19-1115

In the Supreme Court of the United States

AMERICAN BANKERS ASSOCIATION, PETITIONER

v.

NATIONAL CREDIT UNION ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the definitions of "'local community'" and "'rural district'" adopted by the National Credit Union Administration are a permissible exercise of the agency's authority to "prescribe, by regulation, a definition for" those terms. 12 U.S.C. 1759(g)(1).

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D.D.C.):

American Bankers Ass'n v. *National Credit Union Admin.*, No. 16-cv-2394 (Mar. 29, 2018)

United States Court of Appeals (D.C. Cir.):

American Bankers Ass'n v. *National Credit Union Admin.*, Nos. 18-5154 and 18-5181 (Aug. 20, 2019)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-42a) is reported at 934 F.3d 649. The opinion of the district court (Pet. App. 43a-89a) is reported at 306 F. Supp. 3d 44.

JURISDICTION

The judgment of the court of appeals was entered on August 20, 2019. A petition for rehearing was denied on December 12, 2019 (Pet. App. 90a-91a). The petition for a writ of certiorari was filed on March 11, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Under the Federal Credit Union Act (FCUA or Act), 12 U.S.C. 1751 *et seq.*, the membership of a federal credit union may include "[p]ersons or organizations within a well-defined local community, neighborhood, or

rural district." 12 U.S.C. 1759(b)(3). The Act directs the National Credit Union Administration (NCUA) to "prescribe, by regulation, a definition for the term 'well-defined local community, neighborhood, or rural district.'" 12 U.S.C. 1759(g)(1). In 2016, the NCUA revised its definitions of "local community" and "rural district." 81 Fed. Reg. 88,412, 88,412 (Dec. 7, 2016). Petitioner challenged the revised definitions, arguing that they are arbitrary, capricious, and contrary to law. Pet. App. 60a. The district court granted judgment to petitioner with respect to two aspects of the revised definitions and granted judgment to the NCUA with respect to the remaining claims. *Id.* at 43a-89a. The court of appeals reversed with respect to those two aspects, but ordered a remand without vacatur with respect to a different aspect of the revised definitions. *Id.* at 1a-42a.

1. During the Great Depression, Congress enacted the FCUA to make credit more widely available to working Americans who had struggled to obtain loans from banks. See 12 U.S.C. 1751 note; *National Credit Union Admin.* v. *First Nat'l Bank & Trust Co.*, 522 U.S. 479, 483 (1998); Pet. App. 3a-5a. Membership in a federal credit union may be based on either "a common bond of occupation or association" or a shared presence "within a" community. 12 U.S.C. 1759(b). A community credit union may include "[p]ersons or organizations within a well-defined local community, neighborhood, or rural district." 12 U.S.C. 1759(b)(3). Congress did not define those terms, but instead directed the NCUA—the agency that regulates credit unions—to "prescribe,

by regulation, a definition for the term 'well-defined local community, neighborhood, or rural district.'" 12 U.S.C. 1759(g)(1); see 12 U.S.C. 1752a.[1]

2. In December 2016, the NCUA exercised its authority under Section 1759(g)(1) to revise its definitions of two statutory terms—"local community" and "rural district"—as part of a broader effort "to maximize access to federal credit union services to the extent permitted by law." 81 Fed. Reg. at 88,412.

a. In the 2016 rulemaking, the NCUA expanded its definition of "local community." 81 Fed. Reg. at 88,412. Before the 2016 revision, the NCUA had defined a "local community" as a "well-defined" area with "'specific geographic boundaries,'" including (1) a single political jurisdiction, "*i.e.*, a city, county, or their political equivalent, or any individual portion thereof"; (2) a Core Based Statistical Area (CBSA), or a portion of it, that has no more than 2.5 million people; or (3) a Metropolitan Division of a CBSA, or a portion of it, that has no more than 2.5 million people. *Id.* at 88,440. A CBSA is a geographic area with a "core of 10,000 or more population, plus adjacent territory that has a high degree of

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[1] The law that first expressly authorized the NCUA to define those terms was enacted in 1998. See Credit Union Membership Access Act, Pub. L. No. 105-219, § 103, 112 Stat. 917-918. The NCUA had previously determined whether a community credit union could be established for a particular locale by considering whether the credit union would serve a "single, well-defined area where residents interact." 59 Fed. Reg. 29,066, 29,071, 29,077-29,078 (June 3, 1994). The agency has exercised its definitional authority numerous times since 1998. See, *e.g.*, 63 Fed. Reg. 71,998 (Dec. 30, 1998); 68 Fed. Reg. 18,334 (Apr. 15, 2003); 75 Fed. Reg. 36,257 (June 25, 2010); 78 Fed. Reg. 13,460 (Feb. 28, 2013); 81 Fed. Reg. 88,412.

social and economic integration with the core as measured by commuting ties." 75 Fed. Reg. 37,246, 37,249 (June 28, 2010).[2] If a CBSA contains a "single urbanized area with a population of at least 2.5 million" people, that area can be classified as a Metropolitan Division. *Id.* at 37,250.[3]

The NCUA's 2016 revision added two categories of areas that qualify as a "local community" for purposes of forming a community credit union. 81 Fed. Reg. at 88,427. First, the NCUA provided that an area immediately adjacent to an existing local community may be included in that local community if there is "compelling evidence of interaction or common interests." *Id.* at 88,440 (capitalization omitted). The NCUA explained

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[2] Specifically, a CBSA must have an urbanized area of at least 50,000 people or an urban cluster of at least 10,000 people (as defined by the Census Bureau). 75 Fed. Reg. at 37,249-37,250. The "[c]ore" of the CBSA is formed by the counties where a majority of people live in large urban areas. *Id.* at 37,250. Outlying counties are included in the CBSA if at least a quarter of the county's workers work in the "[c]ore," or if workers from the "[c]ore" account for at least a quarter of the county's employment. *Ibid.*

[3] A Metropolitan Division can be based on a "main county" where at least 65% of the workers living in the county also work in the county, and at least 75% of the people working in the county also live in the county. 75 Fed. Reg. at 37,250. A Metropolitan Division can also be based on a "'secondary county,'" where most of the workers living in the county also work in the county, if that county is contiguous with another secondary county or a main county "with which it has the highest employment interchange measure of 15 or more." *Ibid.* An "employment interchange measure" calculates the commuting and employment ties between two areas—it is the sum of (1) the percentage of workers living in the smaller area who work in the bigger area and (2) the percentage of jobs in the smaller area that are filled by workers who live in the bigger area. *Id.* at 37,251 (capitalization and emphasis omitted).

that this addition would be a "logical advance in business development because it would allow [a federal credit union] to add an adjacent area without requiring it to discontinue serving its existing community." *Id.* at 88,415.

In the 2016 rulemaking, the NCUA further determined that a local community may be a Combined Statistical Area, or a portion of it, that has no more than 2.5 million people. 81 Fed. Reg. at 88,415. A Combined Statistical Area is an area created by two or more adjacent CBSAs that have specific commuting ties. 75 Fed. Reg. at 37,250-37,251.[4] The NCUA explained that defining "local community" to include Combined Statistical Areas would allow credit unions to expand their services "consistent with NCUA's long-standing consideration of factors such as employment, commuting patterns and economic interaction." 81 Fed. Reg. at 88,414 (capitalization and emphasis omitted).

The NCUA's 2016 revisions also eliminated a previous regulatory requirement that a "local community" based on a portion of a CBSA must always include the core of that area. 81 Fed. Reg. at 88,413.[5] The NCUA explained that the core requirement had initially been adopted to ensure that credit unions "adequately serv[e] the intended beneficiaries of the requirement—namely low-income and underserved populations." *Ibid.* Based on periodic evaluations of federal credit unions' performance, however, the NCUA determined

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[4] Specifically, the CBSAs must have an employment interchange measure of 15 or more. 75 Fed. Reg. at 37,250-37,251; see p. 4, n.3, *supra*.

[5] The NCUA had adopted that regulatory requirement in 2010. See 75 Fed. Reg. at 36,258. Prior to that amendment, the regulation did not require a local community to include a core service area.

that federal credit unions had been successful "in providing financial services to low-income and underserved populations without regard to where they are located within a community, *i.e.*, beyond its 'core area.'" *Id.* at 88,414. Rather than retain an absolute rule requiring inclusion of a CBSA's core, the NCUA stated that it would use its supervisory authority over credit unions to "ensure fair and adequate service to the low-income and underserved populations." *Ibid.*

b. The NCUA's 2016 revisions also expanded the definition of "rural district." 81 Fed. Reg. at 88,412. The NCUA had previously defined a "rural district" as an area (1) with well-defined, contiguous boundaries; (2) that has no more than 250,000 people or no more than 3% of the population of the State in which the majority of the district is located; and (3) where either a majority of the district's population lives in areas designated as rural by the U.S. Census Bureau or the total area's population density is no more than 100 people per square mile. *Id.* at 88,416 (capitalization omitted). The 2016 revision redefined "rural district" as an area (1) with well-defined, contiguous boundaries that do not exceed the outer boundaries of States that are immediately contiguous to the State in which the credit union maintains its headquarters; (2) with a total population of no more than one million people; and (3) where either a majority of the district's population lives in areas designated as rural by the U.S. Census Bureau, or the total area's population density is no more than 100 people per square mile. *Id.* at 88,440 (capitalization omitted).

The NCUA explained that it had decided to raise the population cap for a rural district because its experience indicated that a larger population may be required "to provide a level of operating efficiencies and scale that

would make the area attractive as a strategic option" for credit unions to operate. 81 Fed. Reg. at 88,416; see *id.* at 88,417. The NCUA added that the higher population cap would "facilitate credit unions' statutory responsibility to provide consumers, including persons of modest means who may reside in rural areas, with access to our national system of cooperative credit." *Id.* at 88,416. The NCUA also determined that a flat limit of one million people per rural district would "strike[] an appropriate balance between economic viability and an excessive population." *Id.* at 88,417. For similar reasons, the NCUA limited the geographic boundaries of a rural credit union to the State where the credit union is headquartered and the immediately contiguous States. *Id.* at 88,418.

3. Petitioner, an association of banks that compete with credit unions, challenged the NCUA's 2016 revisions under the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, 701 *et seq.* See Pet. App. 43a, 60a. Petitioner contended that the NCUA's revisions were arbitrary, capricious, or contrary to the FCUA. *Id.* at 57a, 60a; see 5 U.S.C. 706(2)(A) and (C). The district court granted judgment in part to petitioner and in part to the NCUA. See Pet. App. 43a-89a.

a. The district court observed that its review of the NCUA's "interpretation of a statute it administers is governed by the two-step" framework of *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Pet. App. 57a. The court explained that a statutory "grant of definitional authority to" an agency, like the one that Congress provided in Section 1759(g)(1), "decides Step One [of the *Chevron* analysis] in the agency's favor because the definitional provision 'confirms that the Congress has not directly spoken' to

the interpretive question." *Id.* at 58a (quoting *Lindeen* v. *SEC*, 825 F.3d 646, 653 (D.C. Cir. 2016)). Such a "grant of definitional authority," the court added, "'necessarily suggests that Congress did not intend the terms to be applied in their plain meaning sense." *Ibid.* (quoting *Women Involved in Farm Econ.* v. *United States Dep't of Agric.*, 876 F.2d 994, 1000 (D.C. Cir. 1989), cert. denied, 493 U.S. 1019 (1990)) (brackets omitted). Rather, the court explained, the grant of definitional authority "'manifests that the Congress intended the agency to enjoy broad discretion to decide' what the statute means by the terms to be defined." *Ibid.* (quoting *Lindeen*, 825 F.3d at 653) (brackets omitted). The court emphasized, however, that "the agency's exercise of definitional authority must survive *Chevron* Step Two—it cannot be 'manifestly contrary to the statute.'" *Id.* at 59a (quoting *Lindeen*, 825 F.3d at 656).

b. The district court held that, contrary to the NCUA's 2016 revision, a "local community" cannot be defined to include a Combined Statistical Area. Pet. App. 62a-72a. The court based that conclusion on dictionaries defining "local" to mean "geographically limited," *id.* at 62a-63a (emphasis omitted), and state statutes that use the term "local community" to mean "an area no larger than a county," *id.* at 63a-65a (emphasis omitted). The court added that the terms "neighborhood" and "rural district" in 12 U.S.C. 1759(b)(3) describe "relatively small area[s]," and it inferred that "local community" must be similarly limited to a "neighborhood or county." Pet. App. 65a-66a (brackets and emphasis omitted).

c. The district court also held that the term "rural district" could not be defined in the way the NCUA's

2016 revisions defined it—as an area of up to a million people within immediately contiguous States, where the majority of the population resides in rural areas or the total population density is under 100 people per square mile. Pet. App. 82a-88a (emphasis omitted). The court recognized that "[d]ictionaries from around 1934" had defined the word "district" to include "geographically expansive" areas. *Id.* at 83a (emphasis omitted). It noted, however, that many 1934-era state statutes had used the term "rural district" to refer to areas "much smaller than a state," *id.* at 86a (emphasis omitted), and that in the United Kingdom the term was used to mean a "subdivision of an administrative county," *id.* at 84a (citation omitted). The court also reiterated its view that the other terms in Section 1759(b)(3) ("neighborhood" and "community") describe small areas. *Id.* at 86a (emphasis omitted).

d. With respect to the other challenged portions of the 2016 revisions, including the NCUA's elimination of the requirement that a CBSA include the core, the district court rejected petitioner's claims. Pet. App. 77a-80a. As relevant here, the court credited the NCUA's finding that "credit unions were adequately serving low-income areas and would continue to do so without the core requirement, perhaps even 'more effectively.'" *Id.* at 79a (citation omitted).

4. The NCUA appealed the district court's invalidation of its revised definitions of "local community" and "rural district," while petitioner cross-appealed the court's decision to uphold the other challenged portions of the revised definitions. Pet. App. 11a. The court of appeals unanimously reversed the district court's decision with respect to the revised definitions of "local community" and "rural district." *Id.* at 17a-30a, 34a-39a.

The court of appeals remanded the matter to the agency to further explain its decision to eliminate the requirement to include the core of a CBSA. *Id.* at 30a-32a, 39a-42a.[6]

a. The court of appeals analyzed petitioner's claims under "the familiar *Chevron* doctrine," asking "'whether Congress has directly spoken to the precise question at issue,'" and, if not, "'whether the agency's answer' to the question 'is based on a permissible construction of the statute.'" Pet. App. 15a-16a (quoting *Chevron*, 467 U.S. at 842-843). The court explained that Congress's decision (see 12 U.S.C. 1759(g)(1)) to "expressly assign[] the NCUA the power to define the challenged terms" meant that the court could "proceed to *Chevron*'s second prong without further analysis." Pet. App. 16a. The court accordingly "turn[ed] to whether the NCUA's definitions are 'based on a permissible construction of the statute.'" *Id.* at 17a (quoting *Chevron*, 467 U.S. at 843).

b. The court of appeals rejected the district court's conclusion that the statutory term "local community" must be limited to "an area no larger than a county." Pet. App. 18a (citation omitted). While recognizing that the term "local" implies an area that "is confined to a

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[6] The court of appeals noted that, after the district court issued its decision, the NCUA had eliminated the portion of the rule that defined "local community" to include Combined Statistical Areas. Pet. App. 12a. The court of appeals held that petitioner's challenge to that portion of the rule was not moot, however, because the NCUA had represented that it would re-adopt the challenged definition if the agency prevailed on appeal. *Id.* at 12a-13a (citing *City of Mesquite* v. *Aladdin's Castle, Inc.*, 455 U.S. 283, 289 & n.11 (1982)). After the court of appeals issued its decision, the NCUA proposed to re-promulgate its revised definition of "local community." 84 Fed. Reg. 59,989, 59,990, 59,993-59,995 (Nov. 7, 2019).

particular place," the court explained that nothing in the statute or in common definitions of "local" or "local communities" mandates the district court's county-size restriction. *Id.* at 19a-22a (citations and internal quotation marks omitted). Instead, the court of appeals concluded that the term "'local'" could be "sensibly read[]" to mean "neither 'broad' nor 'general,'" a meaning that was consistent with the NCUA's revised definition. *Id.* at 20a (citation omitted).

Petitioner contended that the NCUA's revised definition was invalid because it could theoretically allow for a "local community" to include towns on the far ends of a large Combined Statistical Area, which might be "parts of different urban centers with no connection with one another." Pet. App. 26a. In rejecting that argument, the court of appeals noted that such a "local community" must still fit under the rule's population limit of 2.5 million people, and that any credit union seeking to serve that community must demonstrate that it has a realistic business plan for serving the entire area. *Id.* at 26a-27a. The court added that, if the NCUA ever approved a credit union for such a "local community," petitioner or others aggrieved could bring an as-applied challenge to that decision, as petitioner had successfully done in other circumstances. *Id.* at 27a-28a (citing successful as-applied challenges). The court declined, however, to invalidate the NCUA's revised definition on its face based on petitioner's invocation of "a hypothetical case." *Id.* at 27a (citation omitted).

c. The court of appeals also upheld the NCUA's revised definition of "rural district." Pet. App. 34a. The court explained that the term "rural district" does not have a dictionary definition that indicates a limited population or geographic size. *Id.* at 35a. Rather, based on

the usual understandings of "rural" and "district," the court determined that a rural district generally must be an area that resembles the countryside. *Ibid.* The court concluded that the NCUA's revised definition was consistent with that general understanding because it required that most residents live on rural land or that the population density not exceed 100 people per square mile. *Ibid.* The court also noted that the NCUA's revised definition had introduced a new size limit confining rural districts to the State in which the credit union was headquartered and immediately contiguous States. *Id.* at 35a-36a.

The court of appeals rejected the district court's conclusion that a "rural district" must be limited to an area "much smaller than a state." Pet. App. 36a (citation omitted). The court explained that the district court's conclusion was derived from a United Kingdom definition of "rural district" and other interpretive tools—including a Westlaw search of state-court opinions from 1920-1940 that had used the term "rural district"—that did not limit the meaning of the term as it appears in the FCUA. *Id.* at 36a-38a. The court of appeals added that, while petitioner had described hypothetical situations in which rural districts might have "unruly shapes" or include "dense urban areas, * * * such implausible outliers do not impugn the rule's general reasonableness." *Id.* at 38a-39a.

d. With respect to petitioner's cross-appeal, the court of appeals set aside the NCUA's revised rule that a federal credit union serving a portion of a CBSA as a "local community" need not serve the urban core of that statistical area. Pet. App. 28a. The court concluded that the NCUA had not adequately explained how it

would address potential problems created by that aspect of the rule, including petitioner's objection that a federal credit union might "gerrymander[]" its proposed service area to avoid serving poor populations, with a resulting "discriminatory economic impact on urban residents." *Id.* at 32a-33a. The court accordingly remanded this portion of the rule without vacating it, so that "the NCUA might be able to offer a [satisfactory reason] on remand." *Id.* at 41a.[7]

5. The court of appeals denied petitioner's request for rehearing en banc with no judge requesting a vote. Pet. App. 90a-91a.

ARGUMENT

Petitioner asks this Court to decide whether a statute that "expressly directs an agency to define a statutory term * * * expand[s] the scope of the agency's authority at *Chevron* step two beyond its ordinary bounds." Pet. i; see Pet. 1-3, 14-25; see also *Chevron U.S.A. Inc.* v. *Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843-844 (1984). This case does not present that question. In evaluating the definitions adopted by the NCUA, the court of appeals quoted and faithfully applied the analytic framework set forth in *Chevron*. Petitioner does not urge that *Chevron* be overruled and does not contend that the decision below conflicts with any decision of another court of appeals. Nor does petitioner suggest that the validity of the NCUA's definitions independently warrants this Court's review. In any event, the court of appeals correctly held that those

[7] In a notice of proposed rulemaking, the NCUA subsequently clarified its rationale for eliminating the requirement to serve the core of a CBSA, and the agency proposed additional enforcement mechanisms to prevent and combat potential discrimination. 84 Fed. Reg. at 59,995-59,999.

definitions are reasonable and consistent with the FCUA. The petition for a writ of certiorari should be denied.

1. Petitioner seeks review on the question whether a "statutory directive to define a particular statutory term grants the agency extra deference or a license to go beyond the bounds of reasonable interpretation." Pet. 16 (citation and internal quotation marks omitted); see Pet. i, 14 (similar). But the court of appeals did not hold (or even imply) that the NCUA was entitled to any extra deference. The court instead analyzed petitioner's challenge under "the familiar *Chevron* doctrine," asking first "'whether Congress has directly spoken to the precise question at issue,'" and, if not, "'whether the agency's answer' to the question 'is based on a permissible construction of the statute.'" Pet. App. 15a-16a (quoting *Chevron*, 467 U.S. at 842-843). Petitioner does not ask the Court to overrule that decision. His objection to the standard applied by the court of appeals accordingly lacks merit.

a. The court of appeals began its "analysis * * * with the statutory text." Pet. App. 16a (citation omitted). The court recognized that Congress had "expressly assigned the NCUA the power to define the challenged terms." *Ibid.* The FCUA directs the NCUA to define "'local community'" and "'rural district' for purposes of" making "any determination with regard to the field of membership of a" community credit union. 12 U.S.C. 1759(g)(1); see 12 U.S.C. 1759(b)(3). That "express delegation of definitional power," the court explained, necessarily means that Congress has not "'directly spoken to the precise question'" at issue. Pet. App. 17a (quoting *Chevron*, 467 U.S. at 842). To the contrary, Congress has directed the NCUA to clarify the

meaning of those terms. *Ibid.*; see, *e.g.*, *Lindeen* v. *SEC*, 825 F.3d 646, 653 (D.C. Cir. 2016); *Women Involved in Farm Econ.* v. *United States Dep't of Agric.*, 876 F.2d 994, 1000 (D.C. Cir. 1989), cert. denied, 493 U.S. 1019 (1990). As petitioner acknowledges (Pet. 14), "such a delegation resolves the question at *Chevron* step one by confirming that * * * the agency has an interpretive choice to make." Petitioner accordingly agrees with the court of appeals that the case should be resolved "at *Chevron* step two by determining whether the agency's definition[s are] 'a permissible construction of the statute.'" *Ibid.* (quoting *Chevron*, 467 U.S. at 843); see Pet. App. 17a.

b. The court of appeals applied precisely that standard, asking "whether the NCUA's definitions are 'based on a permissible construction of the statute.'" Pet. App. 17a (quoting *Chevron*, 467 U.S. at 843). The court added that, under *Chevron*, "[a]gency interpretations promulgated to fill an explicit legislative gap 'are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.'" *Ibid.* (quoting *Chevron*, 467 U.S. at 844). The court accordingly observed that the NCUA had "vast discretion to define" the relevant terms, but it emphasized that the agency's "authority is not boundless," and that the agency "must craft a reasonable definition consistent with the Act's text and purposes." *Id.* at 19a; see *id.* at 18a (stating that the court was "not a 'rubber stamp'" and that "'the agency must examine the relevant data and articulate a satisfactory explanation for its action'") (citations omitted).

Petitioner suggests that this aspect of the court of appeals' approach grants the NCUA "extra deference." Pet. 16; see Pet. 1-3, 14-19. But the standard the court

applied was drawn directly from *Chevron*. See Pet. App. 18a. And this Court has repeatedly articulated that same standard, explaining that "whenever Congress has 'explicitly left a gap for the agency to fill,' the agency's regulation is 'given controlling weight unless it is arbitrary, capricious, or manifestly contrary to the statute.'" *Household Credit Servs., Inc.* v. *Pfennig*, 541 U.S. 232, 239 (2004) (quoting *Chevron*, 467 U.S. at 843-844) (brackets omitted); see, *e.g.*, *United States* v. *Mead Corp.*, 533 U.S. 218, 227 (2001) (similar). Contrary to petitioner's suggestion (Pet. 14-19) that this standard gives agencies unduly broad authority, this Court has described it as an "important limit[]" on the Court's "deference to" agency decisionmaking. *Ragsdale* v. *Wolverine World Wide, Inc.*, 535 U.S. 81, 86 (2002). The court of appeals faithfully applied that settled standard here. See Pet. App. 18a-19a.

c. Petitioner identifies no other basis for review. Petitioner does not suggest that the decision below conflicts with a decision of another court of appeals. The court below relied on a Seventh Circuit decision applying the same approach to a statute that explicitly conferred definitional authority. See Pet. App. 16a-17a (citing *Rush Univ. Med. Ctr.* v. *Burwell*, 763 F.3d 754, 760 (7th Cir. 2014)). The Sixth Circuit has likewise explained that the relevant question in such a case is whether an agency's definition is "arbitrary, capricious, or manifestly contrary to the statute." *Henry Ford Health Sys.* v. *Department of Health & Human Servs.*, 654 F.3d 660, 666 (2011) (quoting *Chevron*, 467 U.S. at 844), cert. denied, 567 U.S. 952 (2012). And in a pre-*Chevron* decision, the Second Circuit reached a similar conclusion, explaining that when "Congress has used a general term and has empowered an administrator to

define it, the courts must respect his construction if this is within the range of reason." *Commissioner* v. *Pepsi-Cola Niagara Bottling Corp.*, 399 F.2d 390, 393 (1968) (Friendly, J.).

Indeed, the district-court decision that petitioner defends applied the same analytical approach as the court of appeals. The district court explained that the express "grant of definitional authority" in Section 1759(g) "'necessarily suggests that Congress did not intend the terms to be applied in their plain meaning sense,'" Pet. App. 58a (quoting *Women Involved*, 876 F.2d at 1000) (brackets omitted), and "'manifests that the Congress intended the agency to enjoy broad discretion to decide' what the statute means by the terms to be defined," *ibid.* (quoting *Lindeen*, 825 F.3d at 653) (brackets omitted). "In other words," the district court summarized, "the agency's exercise of definitional authority must survive *Chevron* Step Two—it cannot be 'manifestly contrary to the statute.'" *Id.* at 59a (quoting *Lindeen*, 825 F.3d at 656).[8]

2. Petitioner's challenge ultimately turns on the court of appeals' evaluation of the particular exercise of agency discretion that is at issue in this case. But petitioner rightly does not suggest that this narrow issue of FCUA interpretation satisfies the usual criteria for this Court's review. The definitions adopted by the NCUA

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[8] Petitioner suggests (Pet. 16-17) that the D.C. Circuit's earlier decisions in *Lindeen* and *Women Involved* departed from the *Chevron* framework. But the court in both those decisions, as in the decision at issue here, recognized that an agency vested with power to define a statutory term must "act[] reasonably" in adopting a definition, which a court reviews at *Chevron* step two. *Lindeen*, 825 F.3d at 656; see *Women Involved*, 876 F.2d at 1003; Pet. App. 58a-59a.

apply only "for purposes" of determining the permissible scope of membership for one type of federal credit union. 12 U.S.C. 1759(g)(1); see 12 U.S.C. 1759(b)(3). That question has no broader significance that would justify this Court's intervention. And the question presented in the petition (see Pet. i) does not fairly encompass any challenge to the validity of the NCUA's definitions of "local community" and "rural district."

In any event, the court of appeals correctly applied *Chevron* in upholding the NCUA definitions at issue here. With regard to the definition of "local community," the agency's inclusion of Combined Statistical Areas (or portions thereof) with no more than 2.5 million people is "consistent with the Act's text" and "rationally advances the Act's underlying purposes." Pet. App. 22a. The court correctly concluded that the "NCUA sensibly reads the term 'local' to mean simply that the community, regardless of shape or size, should be neither 'broad' nor 'general.'" *Id.* at 20a (citation omitted). The court further recognized that, in adopting the revised definition, the agency had reasonably sought to promote the statutory goals that community credit union members share "common bonds" and that federal credit unions have a sufficient membership base to operate effectively. *Id.* at 22a-23a; see 12 U.S.C. 1751 note.

Similarly, in analyzing the NCUA's definition of "rural district," the court of appeals correctly held that the agency definition was "reasonable." Pet. App. 34a-35a. The court recognized that, although the NCUA's expanded definition allows for a generally larger population in rural districts, that definition ensures that the districts must be predominantly rural and geographically limited. *Id.* at 35a-36a. The court correctly held

that the NCUA's revised definition "is consistent with not only the Act's text but also its purposes" because it will better enable "community credit unions in rural districts to reach more persons of modest means who may reside in those areas." *Id.* at 38a (citation and internal quotation marks omitted).

Although petitioner contends that the NCUA's definitions of "local community" and "rural district" are "'not anywhere near [those terms'] standard meaning,'" Pet. 22 (quoting Pet. App. 70a), petitioner does not embrace the district court's understanding of those terms. The court concluded that a "local community" and a "rural district[]" must be areas approximately the size of a county. Pet. App. 70a, 88a (emphasis omitted). But as the court of appeals explained, and as petitioner does not now dispute, there is no textual or other basis for limiting the statute in this way. *Id.* at 18a-22a, 35a-39a. Indeed, under the district court's reading of those terms, prior definitions with which petitioner has no quarrel would likewise be impermissible. See, *e.g.*, 75 Fed. Reg. 36,257, 36,264 (June 25, 2010) (defining "local community" to include CBSAs, or portions thereof, of up to 2.5 million people).

Petitioner's primary objections are that, under the revised definitions, hypothetical credit unions could serve large areas as "local communit[ies]" and some urban areas could qualify as "rural district[s]." Pet. 19-21. But petitioner does not dispute that a single county may be a "local community" under unchallenged portions of the NCUA definitions, even though some counties are geographically large. See Gov't C.A. Reply Br. 8 (identifying counties comparable in size to Switzerland and Denmark). Likewise, petitioner does not dispute the portions of the NCUA's definitions that allow

rural districts to include an urban "hub area" that acts to "support the rural district's economic viability." 81 Fed. Reg. at 88,417. Petitioner's apparent acceptance of those parts of the definitions undermines its objections to the parts at issue here.

In any event, if petitioner or any other entity is aggrieved by a particular application of the NCUA's definitions, it may challenge that application as arbitrary and capricious or otherwise contrary to law. See Pet. App. 27a, 30a, 39a. Indeed, petitioner has successfully raised such as-applied challenges to NCUA decisions in the past. See *American Bankers Ass'n* v. *NCUA*, 347 F. Supp. 2d 1061 (D. Utah 2004); *American Bankers Ass'n* v. *NCUA*, No. 05-cv-2247, 2008 WL 2857678 (M.D. Pa. July 21, 2008). But "'the fact that petitioner can point to a hypothetical case in which the rule might lead to an arbitrary result does not render the rule' facially invalid." Pet. App. 27a (quoting *American Hosp. Ass'n* v. *NLRB*, 499 U.S. 606, 619 (1991)); see *Barnhart* v. *Thomas*, 540 U.S. 20, 29 (2003) (explaining that "[v]irtually *every* legal (or other) rule has imperfect applications in particular circumstances," but that such imperfections do not render a rule facially invalid).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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