In opposing the proposal, the ABA stated that defining a CSA as a ''single local community'' is unreasonable and unlawful. The ABA largely relied on the District Court opinion, which was unanimously reversed by the Circuit Court. The ABA provided examples of CSAs that it believes might not be a WDLC and contended that CSAs have a ''daisy-chain nature'' in which opposite ends have little connection. It then stated that the Circuit Court indicated that some CSAs might not be a WDLC and thus could be challenged on an ''as applied'' basis. The ABA further stated that the term ''local community'' should not automatically include a CSA. Rather, it stated that any presumption that a CSA is a local community should be rebuttable. The ABA further stated that the Board should not adopt these provisions while litigation remains pending, including the possibility of an appeal to the Supreme Court.

After reviewing the comments in light of the unanimous Circuit Court decision to affirm the Board's adoption of a CSA as a presumptive community, the Board has determined that it is appropriate and consistent with the Act to amend the Chartering Manual to allow a CSA to be re-established as a presumptive WDLC. Much of the ABA's argument relied on the District Court decision that was unanimously rejected by the three-judge Circuit Court panel. In applying *Chevron,* the Circuit Court stated: ''We appreciate the District Court's conclusions, made after a thoughtful analysis of the Act. But we ultimately disagree with many of them. In this facial challenge, we review the rule not as armchair bankers or geographers, but rather as lay judges cognizant that Congress expressly delegated certain policy choices to the NCUA. After considering the Act's text, purpose, and legislative history, we hold the agency's policy choices 'entirely appropriate' for the most part. *Chevron,* 467 U.S. at 865.'' [63] With respect to CSAs, the Circuit Court, in rejecting the District Court's analysis, stated:

> In addition to being consistent with the Act's text, the Combined Statistical Area definition rationally advances the Act's underlying purposes. In the 1998 amendments, Congress made two relevant findings about purpose. First, legislators found ''essential'' to the credit-union system a ''meaningful affinity and bond among members, manifested by a commonality of routine interaction [;] shared and related work experiences, interests, or activities [;] or the maintenance of an otherwise well-understood sense of cohesion or identity.'' § 2, 112 Stat. at 914. Second, Congress highlighted the importance of ''credit union safety and soundness,'' because a credit union on firm financial footing ''will enhance the public benefit that citizens receive.'' [64]

The Circuit Court explicitly rejected the ABA's assertion that CSAs have a ''daisy chain'' nature, linking multiple metropolitan areas that have nothing to do with those at opposite ends of the chain. As the court stated:

> [T]he NCUA's definition does not readily create general, widely dispersed regions. *Cf. First Nat'l Bank III,* 522 U.S. at 502 (indicating that community credit unions may not be 'composed of members from an unlimited number of unrelated geographical units'. Combined Statistical Areas are geographical units well-accepted within the government. *See* [81 FR at 88414]. Because they essentially are regional hubs, the Combined Statistical Areas concentrate around central locations. . . . The NCUA rationally believed that such 'real-world interconnections would qualify as the type of mutual bonds suggested by the term 'local community.' . . . Thus, the agency reasonably determined that Combined Statistical Areas ''simply unif[y], as a single community,'' already connected neighboring regions. [*See* 81 FR at 88,415.] [65]

The ABA's misinterpretation of the *Chevron* doctrine was further repudiated by the entire Circuit Court, which rejected the ABA's petition for a rehearing *en banc.* The Board emphasizes that the ABA repeatedly misstates the regulatory framework for approving a presumptive community, both in its court filings and in its comment letter on the proposed rule. Under the regulatory provisions in the Chartering Manual, established by notice-and-comment rulemaking, there is no automatic approval of an application based on a CSA. Rather, an applicant would have to establish in its application that it can serve the entire community, as documented in its business and marketing plan. A further constraint on any such CSA or portion thereof is that its population cannot exceed 2.5 million people. As the Circuit Court noted:

> We might well agree with the District Court that the approval of such a geographical area would contravene the Act. But even so, the Association would need much more to mount its facial pre-enforcement challenge in this case. As the Supreme Court repeatedly has held, ''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. *Am. Hosp. Ass'n* v. *NLRB,* 499 U.S. 606, 619 (1991); *see also EPA* v. *EME Homer City Generation, L.P. (EME Homer),* 572 U.S. 489, 524 (2014) (''The possibility that the rule, in uncommon particular applications, might exceed [the agency]'s statutory authority does not warrant judicial condemnation of the rule in its entirety.''); *INS* v. *Nat'l Ctr. for Immigrants' Rights, Inc.,* 502 U.S. 183, 188 (1991) (''That the regulation may be invalid as applied in s[ome] cases . . . does not mean that the regulation is facially invalid because it is without statutory authority.''); *cf. Barnhart* v. *Thomas,* 540 U.S. 20, 29 (2003) (''Virtually *every* legal (or other) rule has imperfect applications in particular circumstances.'').

Here, the Association's complaint and the District Court's accompanying worry strike us as too conjectural. The NCUA must assess the ''economic advisability of establishing'' the proposed credit union before approving it, [12 U.S.C. 1754], and as part of the assessment, the organizers must propose a ''realistic'' business plan showing how the institution and its branches would serve all members in the local community, *see* [12 CFR. part 701, app. B, ch. 1 section IV.D.] The Association has failed to demonstrate the plausibility of a local community that is defined like the hypothetical narrow, multi-state strip and accompanies a realistic business plan. And if the agency were to receive and approve such an application, a petitioner can make an as-applied challenge. *See, e.g., EME Homer,* 572 U.S. at 523–24; *Buongiorno,* 912 F.2d at 510.[66]

Thus, existing regulatory provisions guard against the extreme examples posited by the ABA, which claims incorrectly that the Board must approve them under the Chartering Manual. The Board agrees with the ABA and the Circuit Court that any application for a presumptive community, including one based on a CSA, can be challenged on an as applied, case-by-case basis. Given this regulatory framework, which is subject to judicial review, the Board agrees with the Circuit Court's reasoning in concluding that re-establishing the CSA as a presumptive community is entirely consistent with the express authority delegated to the Board by Congress. This provision also advances the Act's dual purposes of promoting common bonds while addressing safety and soundness considerations by ensuring that FCUs remain economically viable.

[63] *Am. Bankers Ass'n,* 934 F.3d at 656. *See also* with respect to CSAs: ''The NCUA possesses vast discretion to define terms because Congress expressly has given it such power. But the authority is not boundless. The agency must craft a reasonable definition consistent with the Act's text and purposes; that is central to the review we apply at *Chevron's* second step. Here, the NCUA's definition meets the standard.'' *Id.* at 664.

[64] *Id.* at 665–66.

[65] *Id.* at 666–67.

[66] *Id.* at 668.