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February 1, 2021

Ms. Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: Mortgage Servicing Rights; RIN 3133-AF26

Dear Ms. Conyers-Ausbrooks:

On behalf of America's credit unions, I am writing to the National Credit Union Administration (NCUA) in support of the proposed rulemaking on Mortgage Servicing Rights. The Credit Union National Association (CUNA) represents America's credit unions and their 120 million members.

The NCUA has proposed¹ to amend its investment regulation to permit federal credit unions (FCUs) to purchase mortgage servicing rights (MSRs)² from other federally insured credit unions (FICUs) under certain conditions. For the reasons described below, CUNA supports the proposed rule to remove the prohibition against FCUs from purchasing MSRs as permissible investments while also maintaining safety and soundness. However, we recognize that the purchase of MSRs will not be appropriate for all FCUs given the risks and compliance considerations associated with MSRs.

Proposed Rulemaking

The NCUA is proposing to amend § 703.14 to explicitly permit an FCU to purchase MSRs from other FICUs as an investment, provided:

- 1) The underlying mortgage loans of the MSRs are loans the FCU is empowered to grant;
- 2) The FCU purchases the MSRs within the limitations of the FCU's board of directors' written purchase policies; and
- 3) The board of directors or investment committee approves the purchase in advance.

¹ 85 Fed. Reg. 86,867 (Dec. 31, 2020).

² These functions generally include collecting monthly payments and fees, providing recordkeeping, and performing escrow functions. 85 Fed. Reg. 86,867.

We believe these criteria are appropriate in the context of an FCU purchasing MSR from another FCU.

To ensure that MSR purchased by FCUs meet the same requirements and standards applicable to the loans that a buying FCU can make, the proposed rule would allow purchases of MSR from FCUs only if the underlying mortgage loans from which the MSR are derived meet the same conditions for loans the FCU is empowered to grant. We believe this is an appropriate approach.

Further, we agree with the requirement that MSR be purchased within the limitations of the FCU's board of directors' written purchase policies and the requirement that the FCU's board of directors or investment committee approves the purchase in advance. We believe these requirements will help ensure the purchase of the MSR has been properly vetted by the FCU.

We also believe that removing the prohibition in the investment rule is appropriate and consistent with safety and soundness. The proposed rule would provide flexibility for FCUs to operate their mortgage loan business and would provide FCUs another avenue to sell their MSR, which could generate a higher selling price and keep the MSR within the credit union system.³

Associated Risks

While we believe FCUs should be permitted to purchase MSR, it is important to recognize that MSR have certain inherent attributes that could have an adverse impact on an FCU's financial condition. Given the highly volatile nature of MSR, it is critical that appropriate risk management practices be in place for FCUs that choose to invest in this asset class. In addition to the risks highlighted below, there are other risks (such as market risk and associated market valuation processes) and other compliance considerations [such as strict generally accepted accounting principles (GAAP) reporting requirements] credit unions should be aware of. However, we believe proper controls can be put in place to adequately mitigate associated risks.

Compliance and Reputation Risk

MSR impact compliance and reputation risk due to the high touch nature of interactions with consumers and the attendant legal requirements imposed on mortgage servicers. For example, depending on the amount and types of mortgage loans serviced, servicers must comply with a variety of regulatory requirements that implement the Dodd–Frank Wall

³ Because FCUs are currently prohibited from purchasing MSR by regulation, they are primarily derived when an FCU originates a residential mortgage loan and sells the loan to investors on the secondary market or other purchasers while retaining the corresponding servicing rights. 85 Fed. Reg. 86,867.

Street Reform and Consumer Protection Act of 2010, including amendments to Regulation Z and Regulation X, as well as other applicable state and federal laws.⁴

As noted in the proposal, it is important that FCUs that purchase volumes of MSRs from different FICUs have effective compliance management systems for compliance with the consumer protection-related laws and regulations that apply to mortgage loan servicers. We believe an FCU can effectively manage its exposure to compliance risk through a comprehensive compliance program, which typically includes policies, procedures, processes, monitoring, and an audit function regarding compliance with all applicable laws and regulations, including those that apply to mortgage loan servicing activities.

Liquidity Risk

We recognize that MSRs can bring about liquidity risks. MSRs can carry liquidity risks if the servicer is required under the mortgage servicing contract to remit payments to owners of the mortgage loans even if the servicer is not receiving mortgage payments from borrowers. The NCUA should further examine whether limiting the number of months an FCU is obligated to remit payments to the mortgage loan owner if the borrower fails to make payments would appropriately address any liquidity risk of the purchasing FCU.

Concentration Risk

Additionally, we acknowledge that MSRs may present concentration risks. High concentrations in a particular asset can expose a credit union to undue risk. Thus, we believe it may be appropriate to establish in the final rule a limit on the amount of MSRs an FCU can hold to address concentration risk.

Conclusion

On behalf of America's credit unions and their 120 million members, thank you for considering our comments in response to the proposed rule on mortgage servicing rights. If you have questions about our comments, please do not hesitate to contact me at (202) 508-6743 or LMartone@cuna.coop.

Sincerely,



Luke Martone
Senior Director of Advocacy & Counsel

⁴ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 929-Z, 124 Stat. 1376, 1871 (2010) (codified at 15 U.S.C. § 780).