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National Association of Federally-Insured Credit Unions

January 29, 2021

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

RE: Mortgage Servicing Rights

Dear Ms. Conyers-Ausbrooks:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the notice of proposed rulemaking regarding the National Credit Union Administration's (NCUA) Investment and Deposit Activities Rule (investment rule) to permit federal credit unions (FCUs) to purchase mortgage servicing rights (MSRs) from other federally-insured credit unions (FICUs), under certain conditions. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 123 million consumers with personal and small business financial service products. NAFCU and its member credit unions appreciate the opportunity to provide further input on this proposed rule and generally support the NCUA's efforts to provide flexibility for FCUs to operate their mortgage loan businesses and provide FICUs with another avenue to sell their MSRs. This additional flexibility would allow smaller institutions who want to grow and sell their mortgages to have more options to sell while also allowing growth opportunities for the FCUs who purchase those MSRs. NAFCU encourages the NCUA to defer to FCUs and FICUs to mitigate any potential risks associated with the purchase and sale of MSRs as credit unions already have ample experience servicing their own mortgages and should be able to make risk assessments regarding investments into MSRs without NCUA interference.

General Comments

MSRs are defined as contractual obligations to perform mortgage servicing and the right to receive compensation for performing those services. Mortgage loan servicers function as an intermediary between borrowers and owners of the mortgage loans. Since 2003, FCUs have been able to perform servicing for a member engaged in making mortgage loans as a financial service to its member but, the member is required to own the loan during the time that the FCU provides servicing. FCUs are also able to provide mortgage loan servicing as a charitable contribution. Under the investment rule, FCUs are prohibited from purchasing MSRs as permissible investments. This proposed rule, if finalized, will remove the current prohibition on FCUs' ability to purchase MSRs. For an FCU to purchase MSRs under the proposed rule, the loan must be one that the FCU was empowered to grant, within the limitations of the board of directors' written purchase policies, and there must be prior approval by the board of directors or investment committee.

NAFCU supports FCUs having flexibility in operating their mortgage servicing business in a way that fits their strategic objectives and allows FICUs another avenue to sell their MSR. This proposed rule provides a benefit to the mortgage loan servicing operations of an FCU when purchasing MSRs because it increases their mortgage portfolio. As mentioned in the proposed rule, the ability to purchase and sell MSRs to and from credit unions is inherent in the powers granted to FCUs under the *Federal Credit Union Act* (FCU Act). In 2019, about \$240 billion in real estate loans were sold outside of the credit union system; consequently, removing the prohibition will promote safety and soundness by keeping revenue within the credit union system. Taking it a step further, NAFCU urges the NCUA to consider allowing FCUs to purchase MSRs from any source, not just FICUs, as this is also consistent with the FCU Act.

Currently, not having the ability to purchase MSRs limits FCUs' ability to grow and makes it more challenging for FICUs to find a buyer. This proposed rule would allow FICUs to sell their loans more quickly to FCUs, with a streamlined process, allowing smaller institutions to remove these mortgage loans from their portfolios, potentially reaping a higher price and keeping the revenue within the credit union system. Although there may be some potential risks associated with the sale and purchase of MSRs, the evaluation of those risks should be left to the judgment of the credit union and should not be artificially limited by metrics set by the NCUA.

These transactions do not pose a risk to the National Credit Union Share Insurance Fund or the safety and soundness of the industry as credit unions are adept at servicing their own mortgages and capable of making risk-based decisions regarding their lending portfolios to engage in appropriate investments. Credit unions have strong underwriting practices and did not engage in the types of risky lending practices that precipitated the financial crisis. The proposed rule also does not provide any data indicating existing risks to banks or other financial service institutions who purchase FICU MSRs, so the rationale for potential risks within the credit union system due to the sale and purchase of MSRs is unfounded. Furthermore, despite some concerns from a competitive perspective, competition is a natural part of any market and credit unions engaging in these transactions can price in that risk as well as other potential risks.

In its final MSR rule, NAFCU urges the NCUA to maintain its existing posture regarding questions related to investment authorities and alignment of fields of membership. For example, modification of a loan in which an FCU only has MSR should not be considered a new extension of credit by that FCU. Throughout the life of a mortgage loan, a borrower's circumstances may change, giving rise to the need for loan modification. Modification of a loan, consistent with the originating FICU's instructions, should not trigger any concerns related to field of membership or an FCU's ability to continue to service the loan. Further, FCUs should not have to separate the loans they are servicing from their normal day to day business, such as member services and marketing outreach.

The NCUA should leave risk management to the judgment of the selling FICU and purchasing FCU

Compliance Management

FICUs have been selling mortgage loans to the government sponsored enterprises (GSEs) for many years. Consequently, their compliance management systems would not need much expanding to comply with the consumer protections that apply to the transfer and servicing of mortgage loans. NAFCU requests that the NCUA defer to FCU management about business decisions for their credit union and memberships in terms of purchasing MSRs. In the proposed rule, the NCUA states that FCUs have experience originating and servicing mortgage loans. It follows that the safety and soundness of the industry should not be a concern if this rule is finalized as proposed. That is because credit unions engaging in these transactions will have proper monitoring and controls in place to ensure their loans are performing, that they are able to assist borrowers facing difficulties making payments to ensure repayment of the loan obligation, and will monitor their lending portfolios to minimize risks and ensure their investments are providing returns and not exposing the credit union to undue risk.

Eligibility Criteria

NAFCU does not support the eligibility criteria based on a credit union's capital levels or CAMEL rating. The proposed rule requests comment on criteria that the FCU be well capitalized for a minimum of six quarters preceding its purchase of MSRs and have a composite CAMEL rating of 1 or 2 with a management rating of a 1 or 2 for at least the two examination cycles preceding its purchase of MSRs. Although the safety and soundness of the credit union system is a top priority, such limitations would potentially hinder credit unions' ability to grow, make more loans to its members, and better serve their communities. Moreover, such limitations are inappropriate at a time when credit unions continue to face a large influx of deposits because of changes in consumer behavior due to the COVID-19 pandemic. NAFCU has previously asked for amendments to credit union investment authorities to help credit unions manage this asset growth and additional investment authority should be provided without a long list of caveats and regulatory red tape.

NAFCU reiterates that FICUs have been selling mortgage loans to the GSEs for many years and requests that the NCUA defer to FICUs about business decisions and the management of their credit union. When FCUs are servicing a loan that they originate, there is no such criteria regarding their capital levels and CAMEL rating, so there is no justifiable need for any eligibility criteria if they were to purchase MSRs from an FICU. FCUs will complete their own risk assessments before purchasing the MSRs and the decision to purchase based on those risk assessments should be left with the FCUs. FCUs have ample experience originating and servicing mortgage loans, so there is no need for additional constraints on this much needed authority to allow FCUs to purchase the MSRs of other FICUs.

Liquidity Risks

NAFCU is also opposed to NCUA imposing concentration limits in the final MSR's rule. FCUs and FICUs should be able to set their own concentration limits internally if through a risk assessment they determine such limits are necessary. A blanket concentration limit for the entire industry does not take into account the unique circumstances of each credit union and its membership and is yet another effort to remove control over business decisions from credit union management.

Additionally, NAFCU does not support the requirement that MSR's be purchased within the limitations set by the board of directors' written purchase policies and that the board of directors or investment committee of an FCU approve purchases in advance. This additional step would only delay transactions and create more paperwork for the volunteers on board of directors or investment committees. Such review and approval would likely not have a material impact on the decision of whether to purchase MSR's and would only serve to clog up the process, require the expenditure of additional resources, and create unnecessary regulatory obstacles. FCUs are aware of the risks associated with purchasing MSR's and should be able to address and mitigate those risks for themselves.

With regard to a limit on the amount of months an FCU is obligated to remit payments to the mortgage loan owner if the borrower fails to make payments, NAFCU recognizes that the purchasing FCU may face liquidity risks in such a situation, but the FCU is aware of these risks when buying MSR's and can perform its own cost-benefit analysis. The NCUA should allow the purchaser and seller to determine the extent of any liquidity protection in their agreement instead of imposing a blanket requirement for all credit unions.

Conclusion

NAFCU appreciates the opportunity to comment on the proposed MSR's rule and supports the NCUA in amending its investment rule to permit FCUs to purchase MSR's from other FICUs. NAFCU supports the proposed rule but does not support unnecessary limitations and requirements for such transactions. FCUs should be able to control their own risk mitigation and the NCUA should defer to a credit union's judgment. If you have any questions or concerns, please do not hesitate to contact me at (703) 842-2268 or amoore@nafcu.org.

Sincerely,



Aminah M. Moore
Regulatory Affairs Counsel