Cooperative
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Creating Cooperative Power

February 1, 2021

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

RIN 3133-AF26

Re: Cooperative Credit Union Association Inc.'s Comments on Proposed Rule: Mortgage Servicing Rights

BY ELECTRONIC MAIL: http://www.regulations.gov

Dear Ms. Conyers-Ausbrooks:

On behalf of the member credit unions of the Cooperative Credit Union Association, Inc. ("Association"), please accept this letter relative to the request for comments issued by the National Credit Union Administration Board ("NCUA") on a proposed rule[1] ("proposal") relative to mortgage servicing rights ("MSRs"). The Association is the state trade association representing approximately 200 state and federally-chartered credit unions located in the states of Delaware, Massachusetts, New Hampshire, and Rhode Island which further serve over 3.6 million consumer members.

The Association conducted a survey of its members on the provisions of the proposal and member views from the survey as well as direct comments received provide the basis for this comment letter.

A. Overview

The thrust of the proposal is to amend the federal credit union investment regulation to permit the purchase of MSRs from other federally-insured credit unions.[2] To begin, Association survey

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[1] The Association observes that the format and language of the proposal is confusing. The introductory language and use of open questions to solicit comment suggest that the proposal is an Advance Notice of Proposed Rulemaking. Further, information requested by using clauses referencing "should the proposed rule" suggests that an actual proposed rule will follow. Yet the Action stated in the Federal Register is listed as a proposed rule. The Association looks forward to a proposed rule promulgated by the NCUA incorporating recent comments received on MSRs.
[2] The Association notes and supports that the proposed rule requires that the MSRs authority would be subject to certain requirements, such as that these loan rights purchased are those that a

respondents remain unanimously in support of the expanded investment authority. In addition, members believe the timing to launch consideration of the proposal is also warranted as the elongated pandemic health emergency has resulted in increased deposit flows rendering additional investment options a welcome tool.

It is important to note that unanimous support of the proposal is also consistently shared by survey respondents who engage in mortgage lending but do not currently service residential mortgage loans.[3] Accordingly, Association members recognize the universal benefits of mortgage servicing which include a more positive member/consumer/borrower experience, new cross-selling opportunities and revenue sources connected to a longstanding and traditional product offering responsible for building borrower wealth and achieving the dream of homeownership.

Finally, the Association is pleased that the NCUA noted in its preamble to the proposal that the Board believes that federal credit unions have demonstrated experience originating and servicing residential mortgage loans. 85 Fed. Reg. 86869 (Dec. 31, 2020). Moreover, the Association believes that this premise is equally applicable to all federally-insured credit unions. State-chartered credit unions are not exempt from such demonstrated performance. In particular, Association members in New England have a longstanding history of strong mortgage lending, including during the most volatile economic cycles, and recent market cycles support their seasoned ability to reasonably manage risks associated with such lending.

B. Responses to Specific Questions

The proposal offered a series of specific questions for response and the following aspects of the proposal are unanimously supported by Association members:

- Requirements that a federal credit union be required to be "well capitalized" in order to purchase MSRs from other federally-insured credit unions; and

- Limitations on the amount of months a federal credit union is obligated to remit payments to the mortgage loan owner if the borrower fails to make payments, such as by establishing a maximum of three to six months of payments made to the mortgage loan owner when a borrower fails to make payment on the serviced mortgage loan, to address liquidity risk in purchasing MSRs.

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federal credit union is otherwise empowered to grant, that the investments be consistent with safety and soundness and that they would be made in accordance with approved policies and procedures that address the risk of such investments and servicing practices. The Association does question, however, why the proposal limits MSRs transactions only to federally-insured credit unions if adequate consumer protection, financial safeguards and sound controls are included.

[3] Approximately one-third of Association survey respondents do not currently service mortgage loans.

Equally of note are the unanimous responses in opposition received by the Association. Specifically, members opposed the inclusion of the suggested limit, no more than twenty-five percent (25%) of net worth, on the total amount of MSRs that a federal credit union may hold in any final rule. Not only is 25% unwarranted as a limit, it reflects an arbitrary "one size fits all" approach, as opposed to a risk based approach addressed by policy, and serves to reinforce the long held myth that credit unions are subject to a 25% aggregate mortgage limit. Finally, the Association believes that a proposed 25 percent limit could have a disproportionate impact on modest sized credit unions.

In responding to other questions set forth in the proposal, the Association offers the following views from members:

- The current prohibition against federal credit unions purchasing MSRs as financial assets from other mortgage lenders has impacted their ability to achieve their strategic objectives. Providing excellent member service is at the heart of what credit unions do. Survey respondents questioned what better way to continue to service members than to maintain mortgage servicing within the credit union system rather than selling the MSR's to an institutional investor; and

- While adjustments to compliance management systems ("CMS") may be warranted if a federal credit union expands its loan servicing operations, survey respondents did not generally believe that changes to comply with the consumer protections that apply to the transfer and servicing of mortgage loans will be significant. Many credit unions engaged in mortgage lending are already underwriting and servicing residential mortgage loans and complying with all required regulations. Furthermore, state regulation in this area is also not new and credit unions are well positioned for compliance purposes. [4]

The Association notes that the NCUA has properly recognized that MSRs have certain inherent attributes that could have an adverse impact on a federal credit union's financial condition. In addition, the proposal raises the question whether some credit unions, as mortgage lenders, are capable of managing the MSRs process. The Association believes that proper controls are available to credit unions who seek to use the authority and have often already been adopted to adequately mitigate associated risks.

One control is to invest in the right mortgage servicing software so that credit unions can efficiently service their loans in-house, not only to their own benefit, but also to the benefit of borrowers. Adopting a comprehensive set of technologies is necessary for servicers to work efficiently and comply with regulations. Servicers need robust mortgage servicing software that is integrated with other in-house software, most importantly the core system and loan origination system, to provide seamless data flow for every facet of mortgage servicing. Web portals that enable borrowers to make online payments and access real-time loan information and statements are crucial. Implementing mortgage single sign-on capabilities from within a credit union's own

[4] Massachusetts state-chartered credit unions have long been subject to consumer protection examinations addressing both consumer and real estate lending rules and other laws.

banking system provides greater transparency between systems, enhancing convenience and instant access. As credit unions consider upgrades to their CMS, specifically their mortgage lending quality control programs, any final rule should permit flexibility in an effective date as well as examination findings as credit unions to permit amendments and/or riders to existing CMS contracts, including for enhanced staff training.

Another control readily available is the use of third parties to perform valuations of servicing portfolios, not only to ensure that conformance with GAAP is administered, but also to ensure that an independent, expert financial analysis is conducted to make timely adjustments to minimize risk as may be needed.

- NCUA also raised the application of "well capitalized" requirements, another risk mitigation control, in the proposal. A majority of survey respondents agreed that such capital levels should be sustained for at least six (6) quarters before MSRs can be purchased from other federally-insured credit unions. Furthermore, respondents also offered that a federal credit union should be required to have a composite CAMEL rating of 1 or 2 with a Management rating of a 1 or 2 for at least the last two examination cycles before it can purchase MSRs;[5] and

- With respect to managing concentration risks, survey respondents generally support a limit on the amount of MSRs held by a federal credit union based only on the total amount of MSRs purchased. Further, support also exists for a concentration limit based on the total amount of MSRs that a federal credit union may hold based on traditional metrics such as assets. In contrast, they did not support a limit governed by the aggregate amount of MSRs purchased from other parties as well as MSRs retained after the sale of the underlying mortgage loans by a federal credit union.

C. Additional Comments

The proposal requests additional comments and the Association is pleased to offer the following suggestions:

- Fulfillment of the Credit Union Mission, Collaboration and Service

Time and again, credit unions have earnestly welcomed opportunities to step up and fill the void with healthier alternatives when other financial service providers left a particular market. At present, many banks have retreated from the MSRs market due to the net impact of regulatory changes resulting in the increased costs and risks of mortgage lending and servicing.[6] The

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[5] One survey respondent suggested that these thresholds should be expanded to include level 3 or better.

[6] Following the global financial crisis, a new host of regulations arrived from the *Dodd-Frank Wall Street Reform and Consumer Protection Act,* such as the Ability-to-Repay/Qualified Mortgage rule, resulting in more conservative underwriting and product features, and national servicing standards, formalizing many loss-mitigation requirements adopted during the unprecedented level of foreclosures. Additionally, capital standards and significant financial

Association believes that the NCUA should move forward with a proposal to assist credit unions in fulfilling their mission and managing this gap. It is also well known that large, national mortgage servicers have less than stellar reputations in the area of responding to and managing customer inquiries and responses and the benefits to borrowers of entry by credit unions into further into mortgage servicing will be magnified.

Finally, the Association is mindful of the concerns of the NCUA as to whether the proposed investment authority is appropriate for all credit unions. This comment letter highlights steps that may be taken to protect safety and soundness and offers thresholds to be met for participation. Further, it is without question that any participating credit union must have access to a robust operational servicing platform to utilize the investment opportunity. The Association acknowledges that smaller credit unions who presently originate loans and sells them into the secondary market without servicing retained and without the required infrastructure may not at first glance appear as candidates for the expanded investment authority. In reality, however, the Association envisions that local partnerships may develop, as has occurred in other emerging markets, such as mortgage origination, shared branching and agent credit cards, and cautions the NCUA not to lose sight of the key credit union distinction woven into any transaction involving credit unions: collaboration. Smaller credit unions may seek to partner with their larger marketplace colleagues to enter the MSR marketplace and benefit from economies of scale. NCUA should take the lead for this laboratory and any final rule should permit and encourage such relationships.

- Supervisory Highlights on MSRs

It is recommended that NCUA offer supervisory highlights on MSRs as helpful guidance to the credit union system and which is consistent with other federal agencies.[7] In addition, such action will provide timely clarity on NCUA's emerging risk concerns as credit unions exercise this new authority. The Association recognizes NCUA's current release of periodic supervisory priorities as well as the recent request for comments issued by NCUA and other federal regulators on a proposed rule relative to the role of supervisory guidance.[8] Further, NCUA has echoed guidance released by other regulators from time to time when needed. [9] Therefore, supervisory highlights on MSRS will serve to be consistent with previous actions while enhancing industry clarity.

- Small Servicers Guide

The Association asserts that a small servicers guide governing MSRs would be helpful to various segments of the credit union industry: community lenders who sell all of one category of loan products; community lenders with several loan production offices and small community lenders with full time mortgage banking operations. In addition, the Association suggests that there are

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penalties against mortgage lenders and servicers due to mistakes have all contributed to a marketplace reduction.

[7] CFPB Supervisory Highlights discusses supervisory examination observations in mortgage servicing. [Mortgage Servicing Supervisory Highlights 11 Final_web (consumerfinance.gov)]

[8] The Association offered member comments on proposed supervisory guidance on January 4, 2021.

[9] 14-RA-03/January 2014 (mortgage servicing requirements CFPB on T-I-L-A).

strong, non-community-based lenders, active in the mortgage market, which any final rule should ensure have equal access to MSRs as investments, and who would benefit from such a guide.

- Coordination with State Supervisory Agencies

The Association strongly recommends that NCUA work with state regulators to address supervisory concerns regarding MSRs in a manner that does less harm to the dual chartering system, more effectively mitigates material risk, and improves oversight while not unnecessarily burdening credit unions.

D. Conclusion

The Association appreciates and supports NCUA's efforts to expand investment alternatives for federal credit unions subject to the comments and recommendations contained in this letter.

Thank you for the opportunity to share the views of the Association's members on the proposal relative to investments in MSRs. If you have any questions about the recommendations set forth in this comment letter or require further information, then please do not hesitate to contact the Association at govaff-reg@ccua.org.

Sincerely,

Ronald McLean
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RM/mac/kb