

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703, 721

RIN: 3133-AF26

Mortgage Servicing Rights

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) proposes to amend its investment regulation to permit federal credit unions (FCUs) to purchase mortgage servicing rights from other federally insured credit unions under certain conditions. Under the proposed rule, eligible FCUs may purchase the mortgage servicing rights of loans that the FCU is otherwise empowered to grant, provided these investments are consistent with safety and soundness and made in accordance with the FCU's policies and procedures that address the risk of these investments and servicing practices.

DATES: Comments must be received on or before [INSERT DATE THAT IS 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit written comments, identified by RIN 3133-AF26, by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: (703) 518-6319. Include “[Your Name]—Comments on Proposed Rule: Mortgage Servicing Rights” in the transmittal.
- Mail: Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

PUBLIC INSPECTION: You may view all public comments on the Federal eRulemaking Portal at <http://www.regulations.gov> as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA’s law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518-6540 or e-mailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Rick Mayfield, Senior Capital Markets Specialist; Lou V. Pham, Senior Credit Specialist, Office of Examination & Insurance, or Ian Marena, Associate General Counsel; Chrisanthy Loizos, Senior Trial Attorney, Office of

General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 518-6300 or (703) 581-6540.

SUPPLEMENTARY INFORMATION:

- I. Background**
- II. Legal Authority**
- III. Summary of the Proposed Rule**
- IV. Regulatory Procedures**

I. Background

Generally, when a lender originates a mortgage loan, the lender may retain the loan and the servicing function for the loan in its portfolio, sell the loan along with the mortgage servicing rights to another party, or separate the mortgage servicing rights (MSRs) from its mortgage loan and transfer only the loan or the MSRs to another party. This proposed rulemaking focuses on the purchase of MSRs, as assets that are apart from their underlying mortgage loans. The Board proposes to permit FCUs to purchase MSRs by removing MSRs from the list of prohibited investments¹ in the Investment and Deposit Activities Rule (investment rule) and adding the purchase of MSRs from other federally insured credit unions (FICUs) to the rule's list of permissible investments for FCUs.² Under the investment rule, MSRs are defined as “a

¹ 12 CFR 703.16.

² 12 CFR 703.14.

contractual obligation to perform mortgage servicing and the right to receive compensation for performing those services. Servicing is the administration of a mortgage loan, including collecting monthly payments and fees, providing recordkeeping and escrow functions, and, if necessary curing defaults and foreclosing.”³ While the Federal Credit Union Act specifies the statutory investment powers for FCUs,⁴ the NCUA has adopted regulatory prohibitions against certain investments and investment activities on the basis of safety and soundness concerns, including investments in MSRs.⁵

Mortgage servicing rights can be derived through various processes. Because FCUs are currently prohibited from purchasing MSRs 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. Alternatively, and to a lesser degree, FCUs can retain MSRs if they later sell residential mortgage loans that they had purchased from the originating lender.

Mortgage loan servicers function as intermediaries between borrowers and owners of the mortgage loans. MSRs entitle the servicer to receive compensation from the owner of the mortgage loan in return for performing servicing activities for the underlying mortgage loan. These servicing functions are subject to a servicing agreement and consumer protection laws, as applicable.⁶ These functions generally include collecting monthly payments and fees, providing

³ 12 CFR 703.2.

⁴ 12 U.S.C. 1757(7), (8), (14), (15).

⁵ 62 FR 32989 (June 18, 1997); 66 FR 54168, 54169 (Oct. 26, 2001); 67 FR 78996, 78997 (Dec. 27, 2002); 12 CFR 703.16(a).

⁶ For example, *see* 12 CFR 1024.17; 12 CFR part 1024, Subpart C; 12 CFR 1026.20, .36, .40-.41.

recordkeeping, and performing escrow functions. Further, the servicer also works with borrowers to mitigate loss and pursues foreclosure, as authorized.

In guidance to examination staff, the Office of the Comptroller of the Currency describes MSR or mortgage servicing assets (MSAs) as “complex, intangible assets that arise from owning the rights to service mortgage loans that have been securitized or sold to third-party investors. The market value of MSAs is affected by market supply and demand factors. MSA values are economically represented as the discounted present value of estimated future net cash flows over the life of the underlying mortgage loans. MSAs expose servicers to interest rate, price, compliance, and operational risks. The risk of changes in the fair value of MSAs due to changes in interest rates is normally considered interest rate risk. It could be considered price risk, however, if the bank is actively buying and selling its MSAs. MSAs pose operational risk because the servicing and valuation functions are operations intensive and model dependent.”⁷

MSRs are generally capitalized at fair value and subsequently accounted for using the amortization or fair value method.⁸ The fair value of MSRs is the net present value, using a market-based discount rate, of servicing revenue components (servicing fee, float income, ancillary income, etc.) less expenses, adjusted for prepayment speeds. Prepayment speeds in turn are generally highly dependent on prevailing interest rates. However, determining the fair value of MSRs can be a complex exercise given that their market prices are generally not readily observable. Hence, owners of MSRs typically depend on data-driven models, whether proprietary or purchased, and third party expertise to help them value their MSRs.

⁷ Comptroller’s Handbook for Mortgage Banking, version 1 Feb. 2014 at p. 67.

⁸ See Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 860 – Transfer and Servicing of Financial Assets.

MSRs 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,⁹ servicers must comply with a variety of regulatory requirements that implement the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, including amendments to Regulation Z (implementing the Truth in Lending Act) and Regulation X (implementing the Real Estate Settlement Procedures Act),¹⁰ as well as other applicable state and federal laws, such as the Servicemembers Civil Relief Act (SCRA),¹¹ the Fair Debt Collection Practices Act,¹² and Section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices. To be successful, servicers need not only to understand complexities in determining the value of these assets, but should have effective information management systems, trained personnel, robust internal controls, and appropriate risk management to properly service the loans.

⁹ Small servicers are exempt from numerous requirements that apply to mortgage servicing activities under Regulations X and Z. *See, e.g.* 12 CFR 1024.17; 12 CFR 1024.37-.41; 12 CFR 1026.41. Generally, to qualify as a small servicer, a servicer must service, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee. *See* 12 CFR 1026.41(e)(4) for full definition.

¹⁰ Note that on April 3, 2020, NCUA and the federal banking regulators issued the “Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act” available at https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_mortgage-servicing-rules-covid-19.pdf and the Consumer Financial Protection Bureau (CFPB) issued frequently asked questions regarding its mortgage servicing rules related to the COVID-19 Emergency available at https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rules-covid-19_faqs.pdf. *See also* the CFPB’s interim final rule, “Treatment of Certain COVID-19 Related Loss Mitigation Options,” 85 FR 39055 (June 30, 2020).

¹¹ For example, the SCRA contains a strict liability provision that requires a court order before foreclosing on a mortgage during a period of military service, and for one year after a period of military service. 50 U.S.C. § 3953.

¹² Note the CFPB recently issued a final rule implementing the FDCPA to address the activities of debt collectors, as that term is defined in the FDCPA, with a focus on debt collection communications and related practices by debt collectors. *See* 87 FR 76734 (Nov. 30, 2020).

Over decades, the NCUA has issued many regulations and opinions that have recognized the authority of an FCU to engage in the servicing of loans in varying contexts. Since 1979, an FCU has been permitted “to service any eligible obligation it purchases or sells in whole or in part” under the NCUA’s eligible obligations rule.¹³ The incidental powers regulation¹⁴ has also long provided that FCUs have the authority to provide correspondent services, including loan servicing, to other credit unions.¹⁵ In adopting that regulation, the Board observed: “Correspondent services are services or functions provided by an FCU to another credit union that the FCU is authorized to perform for its own members or as part of its operation.”¹⁶ During the part 721 rulemaking in 2001, the Board agreed with commenters that loan servicing and escrow services were examples of permitted correspondent services.¹⁷ Furthermore, although the purchase of MSRs was to be prohibited under the investment rule, the Board recognized during the rulemaking that an FCU could perform servicing for a member engaged in making mortgage loans as a financial service to its member: “For this activity to be permissible as a financial service to a member, the member must continue to own the loan during the time that the credit union provides servicing. In this context, the NCUA Board concludes that providing mortgage servicing is an appropriate exercise of a credit union’s incidental powers to provide financial service to a member.”¹⁸ Therefore, the authority to provide mortgage loan servicing as

¹³ 12 CFR 701.23(e); 44 FR 27068 (May 9, 1979).

¹⁴ 12 CFR part 721.

¹⁵ 12 CFR 721.3(c).

¹⁶ 66 FR 40845, 40850 (Aug. 6, 2001).

¹⁷ *Id.*; see also NCUA OGC Opinion 09-0430 (August 2009) available at <https://www.ncua.gov/regulation-supervision/legal-opinions/2009/nonmember-loan-servicing>.

¹⁸ 67 FR 78996, 78998 (Dec. 27, 2002).

a financial service to members, under the conditions above, has been in place since 2003.¹⁹ FCUs are also permitted to provide mortgage loan servicing to others as a charitable contribution.²⁰ Further, under the NCUA's Credit Union Service Organization (CUSO) regulation, CUSOs²¹ are expressly preapproved to provide loan support services, including loan servicing and debt collection services.²²

The Board believes it is appropriate now to remove the prohibition against FCUs from purchasing MSRs as permissible investments while also maintaining safety and soundness. FCUs have long had experience originating and servicing residential mortgage loans. In fact, first lien residential mortgage loans account for over one third of outstanding credit union loans as of September 30, 2020, which is the single largest loan concentration in the system. FCUs accounted for \$78 billion of the approximately \$154 billion in first lien residential mortgage loans originated by all FICUs in 2019. Comparatively, FCUs accounted for \$62 billion of the approximately \$117 billion in first lien residential mortgage loans originated by all FICUs in 2018.²³

Like many financial institutions involved in residential lending, FCUs engage in both origination and servicing activities related to residential lending. As of September 30, 2020,

¹⁹ 68 FR 32960 (June 3, 2003).

²⁰ NCUA OGC Opinion 01-0502 (June 18, 2001) available at <https://www.ncua.gov/files/legal-opinions/OL2001-0502.pdf>; 12 CFR 721.3(b)(1).

²¹ Generally, a CUSO is an entity in which a FICU has an ownership interest or to which a FICU has extended a loan, and that entity is engaged primarily in providing products or services to credit unions or credit union members. A CUSO also includes any entity in which a CUSO has an ownership interest of any amount, if that entity is engaged primarily in providing products or services to credit unions or credit union members. *See* 12 CFR 712.1(d).

²² 12 CFR 712.5(j); *see also* NCUA OGC Opinion 09-0349 (May 2009) available at <https://www.ncua.gov/regulation-supervision/legal-opinions/2009/credit-union-service-organization-cuso-purchase-and-servicing-non-performing-loans>.

²³ NCUA Call Report Data as of December 31, 2018 and December 31, 2019.

approximately 3,700 FICUs held \$431 billion in aggregate outstanding first lien residential mortgage loans, with 2,166 FCUs accounting for \$214 billion of the outstanding amount.²⁴

These residential mortgage loans are considered “portfolio” mortgage loans because the FICU has not sold its loans and the FICU (or a related CUSO) provides mortgage servicing activities for said loans. There are no associated MSRs with portfolio mortgage loans from an asset and accounting perspective, but the responsibility to service the mortgage loan rests with the portfolio lender.

Credit unions, like many other lenders involved with mortgage finance, also actively engage in selling residential mortgage loans to investors on the secondary market or other purchasers. In 2019, approximately 1,100 FICUs collectively sold \$63 billion in residential mortgage loans. Five hundred fifty-six (556) FCUs accounted for \$39 billion of the \$63 billion of mortgage loans sold in 2019. Comparatively, approximately 1,100 FICUs collectively sold \$46 billion in residential mortgage loans in 2018, with 553 FCUs accounting for \$26 billion of the total amount sold.

The NCUA began collecting data on MSRs owned by FICUs in 2003 and has found that the value of MSRs in the credit union system increased from approximately \$330 million in 2004 to \$1.8 billion in 2019. During this period, the amount of real estate loans sold where servicing was retained increased from \$46 billion to \$240 billion. As of September 30, 2020, more than 500 FICUs owned \$1.9 billion in MSRs. Of this figure, 235 FCUs accounted for \$1.1 billion in MSRs.²⁵

²⁴ NCUA Call Report Data as of September 30, 2020.

²⁵ NCUA Call Report Data as of September 30, 2020.

The Board recognizes that MSR's have certain inherent attributes that can have an adverse impact on an FCU's financial condition. Mortgage servicing rights can carry operational risks due to a myriad of statutes and regulations to protect consumers, which can expose FCUs to reputational, legal, and compliance risk. In addition, MSR's can expose servicers to liquidity risk as certain mortgage loans which have been sold to investors require the servicer to remit payments to the investors even if borrowers do not make the monthly mortgage loan payments. The value of MSR's is highly dependent on prevailing interest rates. In a rapidly increasing or decreasing interest rate environment, this can introduce extreme volatility to a credit union's financial condition as the MSR's are periodically valued for accounting and reporting purposes. An FCU in poor financial condition may not be able to withstand the financial impact of a significant loss due to a write-down in the value of its MSR's.

The Board believes that FCUs have demonstrated experience originating and servicing residential mortgage loans. Furthermore, although valuing MSR's can be complex, FCUs have sufficient access to market resources and expertise to help them value MSR's when purchased or retained on an ongoing basis for accounting purposes. For these reasons, the Board believes 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 also provide FCUs another avenue to sell their MSR's, which could generate a higher selling price and keep the MSR's within the credit union system.

II. Legal Authority

Section 120(a) of the Federal Credit Union Act²⁶ authorizes the Board to prescribe rules and regulations for the administration of the statute.²⁷ In addition, section 206 of the Federal Credit Union Act provides the Board with broad authority to take enforcement action against a FICU or an “institution-affiliated party”²⁸ that is engaging or has engaged, or the Board has reasonable cause to believe that it is about to engage, in an unsafe or unsound practice in conducting the business of such credit union.²⁹ Congress chose not to define “unsafe or unsound practices” in the Federal Credit Union Act, leaving determinations regarding which actions are unsafe or unsound to the Board.

The Federal Credit Union Act authorizes an FCU “to sell all or a part of its assets to another credit union [and] to purchase all or part of the assets of another credit union. . .subject to regulations of the Board.”³⁰ Given that MSRs are financial assets that may be sold separately from their underlying mortgage loans, an FCU has the statutory authority to sell MSRs to, and purchase MSRs from, another credit union. Further, the Federal Credit Union Act authorizes an FCU “to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.”³¹ As such, NCUA’s incidental powers

²⁶ 12 U.S.C. 1766(a).

²⁷ 12 U.S.C. 1751–1795k.

²⁸ See 12 U.S.C. 1786(r) (providing: “For purposes of [the Federal Credit Union Act], the term ‘institution-affiliated party’ means—(1) any committee member, director, officer, or employee of, or agent for, an insured credit union; (2) any consultant, joint venture partner, and any other person as determined by the Board (by regulation or on a case-by-case basis) who participates in the conduct of the affairs of an insured credit union; and (3) any independent contractor (including any attorney, appraiser, or account) who knowingly or recklessly participates in—(A) any violation of any law or regulation; (B) any breach of fiduciary duty; or (C) any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured credit union.”).

²⁹ 12 U.S.C. 1786.

³⁰ 12 U.S.C. 1757(14).

³¹ 12 U.S.C. 1757(17).

regulation³² has long provided that FCUs have the authority to provide correspondent services, including loan servicing, to other credit unions.³³ Similarly, the eligible obligations rule allows an FCU “to service any eligible obligation it purchases or sells in whole or in part.”³⁴

III. Summary of the Proposed Rule

As set out above, the Board proposes to remove the current prohibition on FCUs purchasing MSR from the investment rule. The Board is proposing to amend § 703.14 to explicitly permit an FCU to purchase MSR from other FICUs as an investment, provided: 1) the underlying mortgage loans of the MSR are loans the FCU is empowered to grant; 2) the FCU purchases the MSR 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.

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 FICUs only if the underlying mortgage loans from which the MSR are derived meet the same conditions for loans the FCU is empowered to grant. This is the same standard applicable to FCUs when buying certain eligible obligations under § 701.23(b). The phrase “empowered to grant” refers to an FCU’s authority to make the type of loans permitted by the FCU Act, NCUA regulations, FCU Bylaws, and an FCU’s own internal policies.³⁵

³² 12 CFR part 721.

³³ 12 CFR 721.3(c).

³⁴ 12 CFR 701.23(e); 44 FR 27068 (May 9, 1979).

³⁵ NCUA OGC Op. 04–0713 (Oct. 25, 2004) available at <https://www.ncua.gov/files/legal-opinions/OL2004-0713.pdf>, 76 FR 81421, 81425 (December 28, 2011).

Consistent with § 701.23, the Board is also requiring MSR be purchased within the limitations of the FCU's board of directors' written purchase policies and requiring the FCU's board of directors or investment committee approves the purchase in advance.

The proposed rule necessarily removes the current prohibition against MSR purchases imposed in § 703.16(a) and reserves the paragraph to correspond to the change in § 703.14. The remaining provision in § 703.16(a), which recognizes an FCU's incidental powers authority to service the loans owned by a member engaged in mortgage lending, is transferred to part 721 as another example of loan-related product. While loan servicing is an incidental powers activity when performed for other credit unions under § 721.3(c) as a correspondent service, the proposed addition to paragraph (h) reflects the existing authority currently found in § 703.16(a) to provide loan-related services to members.

The Board invites comments on all aspects of the proposal³⁶ and, in addition, requests comment on the following questions. The questions raise issues the Board intends to incorporate in the final rule to ensure appropriate safeguards and limitations, and will consider the comments and supporting information it receives in response to this notice.

How would the proposed rule to permit an FCU to purchase MSRs from other FICUs benefit an FCU's mortgage loan servicing operations? The Board solicits feedback on whether the current prohibition against FCUs purchasing MSRs as financial assets from other mortgage lenders has impacted the ability of FCUs to achieve their strategic objectives.

³⁶ As noted, many FCUs have considerable experience in managing the servicing of mortgage loans, therefore the Board is not providing the usual 60-day comment period for this proposal which relieves a regulatory prohibition on investments in MSRs as assets. See NCUA Interpretive Ruling and Policy Statement (IRPS) 87-2, as amended by IRPS 03-2 and IRPS 15-1. 80 FR 57512 (Sept. 24, 2015), available at <https://www.ncua.gov/files/publications/irps/IRPS1987-2.pdf>.

If FCUs purchase volumes of MSRs from different FICUs, are they prepared to ensure they have effective compliance management systems for compliance with the consumer protection-related laws and regulations that apply to mortgage loan servicers? FCUs manage their exposure to compliance risk through a comprehensive compliance program, often referred to as a compliance management system (CMS). An FCU's CMS 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. An effective CMS promotes compliance with consumer protection-related laws and regulations and prevents consumer harm. The Board solicits comment on to what extent FCUs may need to make appropriate adjustments to their CMS if they expand their mortgage loan servicing as provided under the proposed rule, particularly to comply with the consumer protections that apply to the transfer and servicing of mortgage loans, and how the NCUA can best ensure that FCUs purchasing MSRs do so.

Should the proposed rule include additional criteria for an FCU to be eligible to purchase MSRs? In particular, should the FCU be required to be "well capitalized" as defined in part 702? If so, similarly to the eligible obligations rule, should it be well capitalized for a minimum of the six quarters preceding its purchase of MSRs? Should the FCU 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? As detailed in this notice, MSRs carry a variety of risks. As such, the Board is considering certain safeguards that would apply before an FCU is eligible to purchase MSRs, in order to mitigate some of these risks. The Board is considering whether to incorporate one of, or a combination of, these elements in a final rule because it has found these standards to be prudent in other contexts, including the eligible obligations rule and investment rule in

relation to investments in derivatives.³⁷ The Board solicits feedback on whether these proposed standards would mitigate risks inherent in the purchase of MSR and help ensure that FCUs engage in this activity in a safe and sound manner.

Should the final rule include a limit on the amount of MSRs an FCU can hold to address concentration risk? Specifically, should a limit on the amount of MSRs held by an FCU be determined using the total amount of MSRs purchased by the FCU or, alternatively, the aggregate amount of MSRs purchased from other parties and MSRs retained after the sale of the underlying mortgage loans by the FCU? Should the rule limit the total amount of MSRs that an FCU may hold to no more than twenty-five percent (25%) of the FCU's net worth or would another standard, such as a concentration limit based on assets, be more appropriate to address concentration risk? High concentrations in a particular asset can expose a credit union to undue risk. The Board solicits feedback on whether a concentration limit for MSRs would help alleviate risks for FCUs that purchase or originate MSRs.

To address the liquidity risk of the purchasing FCU, should the final rule limit the amount of months an FCU is obligated to remit payments to the mortgage loan owner if the borrower fails to make payments? Specifically, should there be 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? 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 Board solicits feedback on

³⁷ 12 CFR 701.23(b)(2), 703.108(a)(1).

whether there should be a limit on MSRs with certain remittance structures to mitigate liquidity risks to FCUs that purchase MSRs.

Finally, the Board solicits comment on whether the safeguards and limitations applicable to FCUs in the final rule should be extended to all FICUs in light of the risks associated with the purchase of MSRs, as a requirement for obtaining and maintaining federal insurance.

Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include FICUs with assets less than \$100 million) and publishes its certification and a short, explanatory statement in the Federal Register together with the rule. The proposed rule provides additional investment authority to FCUs that meet certain eligibility requirements due to the complexity and risk related to the purchase of MSRs. As of March 31, 2020, of the 3,256 credit unions with federal charters, only 17 FCUs with assets of less than \$100 million had MSRs on their books. Accordingly, the NCUA certifies that the proposed rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new or amends existing information collection requirements.³⁸ For the purpose of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The proposed rule does not contain information collection requirements that require approval by OMB under the PRA.³⁹ The proposed rule provides regulatory relief by allowing eligible FCUs to expand their investment authority to include the purchase of MSRs under similar standards applicable to the purchase of eligible obligations and other investments.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

³⁸ 44 U.S.C. 3507(d); 5 CFR part 1320.

³⁹ 44 U.S.C. Chap. 35.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.⁴⁰

List of Subjects

12 CFR Part 703

Credit unions, investments.

12 CFR Part 721

Credit unions, functions, implied powers.

By the National Credit Union Administration Board on December 17, 2020.

Melane Conyers-Ausbrooks

Secretary of the Board

⁴⁰ Pub. L. 105-277, 112 Stat. 2681 (1998).

For the reasons discussed above, the NCUA Board proposes to amend 12 CFR parts 703 and 721 as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

1. The authority citation for part 703 is revised to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(14) and 1757(15).

2. Amend § 703.16 by removing and reserving paragraph (a).

§ 703.16 Prohibited investments.

(a) [Reserved]

* * * * *

3. Amend § 703.14 by adding paragraph (l) to read as follows:

§ 703.14 Permissible investments.

* * * * *

(l) *Mortgage servicing rights.* A Federal credit union may purchase mortgage servicing rights from other federally insured credit unions as an investment if all of the following conditions are met:

(1) the underlying mortgage loans of the mortgage servicing rights are loans the Federal credit union is empowered to grant;

(2) the Federal credit union purchases the mortgage servicing rights within the limitations of its board of directors' written purchase policies; and

(3) the board of directors or investment committee approves the purchase.

PART 721—INCIDENTAL POWERS

4. The authority citation for part 721 continues to read as follows:

Authority: 12 U.S.C. 1757(17), 1766 and 1789.

5. Amend § 721.3(h) by revising the last sentence in (h) to read as follows:

§ 721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union's business?

* * * * *

(h) * * * These products or activities may include debt cancellation agreements, debt suspension agreements, letters of credit, leases, and mortgage loan servicing functions for a member as long as the loan is owned by a member.

* * * * *