§ 741.204 Maximum public unit and nonmember accounts, and low-income designation.

* * * * *

(c) Follow the requirements of § 702.414 of this chapter for any Grandfathered Secondary Capital (as defined in part 702 of this chapter).

[FR Doc. 2021–27643 Filed 12–22–21; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703 and 721

RIN 3133–AF26

Mortgage Servicing Assets

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is issuing a final rule to permit federal credit unions (FCUs) to purchase mortgage servicing assets (MSAs), referred to as mortgage servicing rights in the proposed rule, from other federally insured credit unions subject to certain requirements. Under the final rule, FCUs with a CAMEL or CAMELS composite rating of 1 or 2 and a CAMEL or CAMELS Management component rating of 1 or 2, may purchase the mortgage servicing rights of loans that the FCU is otherwise empowered to grant, provided these purchases are made in accordance with the FCU's policies and procedures that address the risk of these investments and servicing practices. The Federal Credit Union Act (the Act) permits FCUs to purchase mortgage servicing assets under their express authority to purchase assets from other credit unions.

DATES: The final rule is effective April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Thomas Fay, Director, Capital Markets; John G. Nilles, Senior Capital Markets Specialist, Office of Examination & Insurance, or Ian Marenna, Associate General Counsel; Chrisanthy Loizos, Senior Trial Attorney, Office of General Counsel, or Ernestine Ward, Consumer Compliance Policy and Outreach Program Officer, Office of Consumer Financial Protection, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 518–6300, (703) 518–6540, or (703) 518–6524.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

While the Act provides specific, statutory investment powers for FCUs,[1] the Board has adopted regulatory prohibitions against certain investments and investment activities on the basis of safety and soundness concerns, including the purchase of mortgage servicing rights (MSRs) as an investment.[2] In December 2020, by a vote of 2–1, the Board approved a notice of proposed rulemaking (NPR) [3] to amend the agency's Investment and Deposit Activities Rule (Investment Rule), 12 CFR part 703, to explicitly permit FCUs to purchase MSRs from other federally insured credit unions (FICUs) based on express statutory authority that permits 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.'' [4] The proposed regulatory text provided the following requirements for this investment authority:

(1) The underlying mortgage loans of the MSRs are loans the FCU is empowered to grant; [5]

(2) The FCU purchases the MSRs within the limitations of the FCU's board of directors' written purchase policies; and

(3) The FCU's board of directors or investment committee approves the purchase in advance.

The NPR also included several questions as to whether the rule should place additional conditions on the authority, such as capital requirements, concentration limits, or other measures to address consumer financial protection, compliance risk and liquidity risk.

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 MSRs to another party, or separate the MSRs from its mortgage loan and transfer either the loan or the MSRs to another party. The NPR focused on the purchase of MSRs as assets that are distinct from their underlying mortgage loans. The Board proposed to permit FCUs to purchase MSRs by removing MSRs from the list of prohibited investments [6] in the Investment Rule and adding the purchase of MSRs from other FICUs to the rule's list of permissible investments for FCUs.[7]

Under the current Investment Rule, MSRs are defined as ''a 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.'' [8] Mortgage loan servicers, therefore, are intermediaries between borrowers and owners of the mortgage loans; their servicing functions are subject to a servicing agreement and consumer protection laws, as applicable.[9] MSRs, or mortgage servicing assets, a term used interchangeably with MSRs, are recorded in accordance with Generally Accepted Accounting Principles (GAAP).[10]

Mortgage servicing can carry various risks. Servicers are exposed to liquidity risk if servicing agreements require the servicer to remit mortgage loan payments to the investors of sold loans even when borrowers fail to make their monthly payments. There are also operational risks related to mortgage servicing due to a myriad of statutes and regulations that protect consumers, which can expose FCUs to reputational, legal, and compliance risk. The compliance and reputation risk of a mortgage servicer can be considerable due to the high touch nature of interactions with consumers and the attendant legal requirements imposed on mortgage servicers. For example, depending on the particular servicer and its activities, servicers must comply with a variety of requirements, including the Real Estate Settlement Procedures Act (RESPA) and its implementing regulation, Regulation X; the Truth in Lending Act (TILA) and its implementing regulation, Regulation Z; as well as amendments to Regulations X and Z under the Mortgage Servicing Rules promulgated by the Consumer Financial Protection Bureau, which implement provisions of the Dodd-Frank Wall Street Reform and Consumer

[1] 12 U.S.C. 1757(7), (8), (14), (15).

[2] 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).

[3] 85 FR 86867 (Dec. 31, 2020).

[4] 12 U.S.C. 1757(14).

[5] The phrase ''empowered to grant'' refers to an FCU's authority to make the type of loans permitted by the Act, NCUA regulations, FCU Bylaws, and an FCU's own internal policies. *See* 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).

[6] 12 CFR 703.16.

[7] 12 CFR 703.14.

[8] 12 CFR 703.2.

[9] For example, *see* 12 CFR 1024.17; 12 CFR part 1024, subpart C; 12 CFR 1026.20, .36, .40–.41.

[10] *See* Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 860—Transfer and Servicing of Financial Assets.

Protection Act.[11] As applicable, servicers must comply with other federal laws regarding mortgage servicing, including the Servicemembers Civil Relief Act (SCRA),[12] the Fair Debt Collection Practices Act, and Section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices,[13] as well as any applicable state laws regarding servicing.[14] To be successful, servicers need to understand the complexities in determining the value of these assets, and have effective information and compliance management systems, trained personnel, robust internal controls, as well as appropriate risk management to properly service the loans.

Although limited by the prohibition in the Investment Rule to purchase MSRs, FCUs record MSRs under two circumstances. When an FCU originates a residential mortgage loan and sells the loan to investors on the secondary market or other purchasers, the FCU may retain the corresponding servicing rights for various reasons, including maintaining its servicing relationship with its member. Alternatively, FCUs can retain MSRs if they later sell residential mortgage loans purchased from the originating lender.

Similar to other financial institutions involved in residential lending, FCUs engage in both origination and servicing activities related to residential lending. As of June 30, 2021, approximately 3,600 FICUs held $449 billion in aggregate outstanding first lien residential mortgage loans that they originated, commonly referred to as ''portfolio loans,'' with 2,138, or 59.4 percent, of FCUs accounting for $223 billion, or 49.7 percent, of the total amount.[15] An FCU does not recognize a servicing asset for a portfolio mortgage loan in which the FCU has retained servicing, because it has not undertaken an obligation to service the loan for another party.

Credit unions, similar to other lenders involved with mortgage finance, actively sell residential mortgage loans to investors on the secondary market. As of June 2021, FICUs collectively sold and serviced $270 billion of mortgage real estate loans with FCUs accounting for 53 percent of the total balance. In 2020, approximately 1,100 FICUs collectively sold $120 billion in first lien residential mortgage loans. Of the total $120 billion sold, 535 FCUs accounted for $58 billion of the total amount sold. Comparatively, approximately 1,100 FICUs collectively sold $63 billion in residential mortgage loans in 2019, with 556 FCUs accounting for $39 billion of the total amount sold.

B. Summary of the Proposed Rule

The Board proposed to amend NCUA's Investment Rule to permit FCUs to purchase MSRs from other FICUs. Specifically, the proposed rule removed the current prohibition on FCUs purchasing MSRs from the Investment Rule. The Board proposed to amend § 703.14 to explicitly permit an FCU to purchase MSRs from other FICUs, 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.

To ensure that MSRs purchased by FCUs meet the same requirements and standards applicable to the loans that a buying FCU can make, the proposed rule allowed purchases of MSRs from FICUs only if the underlying mortgage loans from which the MSRs 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).

Consistent with § 701.23, the proposed rule also required that FCUs purchase MSRs within the limitations of the FCU's board of directors' written purchase policies and that the FCU's board of directors or investment committee approves the purchase in advance.

The proposed rule removed the regulatory text that prohibits the purchase of MSRs in § 703.16(a) and reserved 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, was transferred to part 721 as another example of a 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) reflected the existing authority currently found in § 703.16(a) to provide loan-related services to members.

In addition, the Board requested comment on the following questions with the expressed intention that the final rule would incorporate appropriate safeguards and limitations as informed by the responses the Board received in response to the NPR.

- Benefits: How would the proposed rule to permit an FCU to purchase MSRs from other FICUs benefit an FCU's mortgage loan servicing operations?
- Compliance Risk: 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?
- Capital and CAMEL Requirements: 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?
- Concentration Risk: 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

[11] 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. Note however, a servicer is not a small servicer under § 1026.41(e)(4)(ii)(A) if it services any mortgage loans for which the servicer or an affiliate is not the creditor or assignee (that is, for which the servicer or an affiliate is not the owner or was not the originator).

[12] 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.

[13] Note, under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, it is unlawful for any provider of consumer financial products or services or a service provider to engage in any unfair, deceptive, or abusive act or practice. Dodd-Frank Act, 12 U.S.C. 5536 (a)(1)(B).

[14] ''State laws that give greater protection to consumers are not inconsistent with and are not preempted by RESPA or Regulation X. In addition, nothing in RESPA or Regulation X should be construed to preempt the entire field of regulation of the practices covered by RESPA or Regulation X, including the regulations in Subpart C with respect to mortgage servicers or mortgage servicing.'' 12 CFR 1024.5(c) and Commentary .5(c)(1)–1. See also the preemption of state law provision in the mortgage servicing transfer rule, which states ''[p]rovisions of State law, such as those requiring additional notices to insurance companies or taxing authorities, are not preempted by section 6 of RESPA or this section, and this additional information may be added to a notice provided under this section, if permitted under State law.'' 12 CFR 1024.33(d).

[15] NCUA Call Report Data as of June 30, 2021.

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 25 percent 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?

- Liquidity Risk: 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?

In addition to the questions listed, the Board also solicited 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 share insurance.

II. Final Rule

The final rule removes the prohibition on FCUs from purchasing MSRs under the Investment Rule.[16] The final rule also removes the current defined term ''mortgage servicing rights'' in the Investment Rule and replaces it with the term ''mortgage servicing assets.'' For consistency with part 702, the final rule adopts the same definition for ''mortgage servicing assets'' that the Board adopted under its amendments to the risk-based capital (RBC) rule.[17] Under the RBC rule, MSAs are defined as ''assets, maintained in accordance with GAAP, resulting from contracts to service loans secured by real estate (that have been securitized or owned by others) for which the benefits of servicing are expected to more than adequately compensate the servicer for performing the servicing.'' [18] This alignment in the final rule does not make substantive definitional changes to terms that are commonly used interchangeably by industry and regulators, but rather ensures uniformity and clarity in the regulatory text for compliance with both the investment and capital rules.[19]

The final rule amends § 703.14 to explicitly permit an FCU to purchase MSAs from other FICUs, provided:

(1) After the last full examination of the credit union, the FCU received a composite CAMELS rating of 1 or 2, which also included a Management rating of 1 or 2; [20]

(2) The underlying mortgage loans of the MSAs are loans the FCU is empowered to grant;

(3) The FCU purchases the MSAs within the limitations of the FCU's board of directors' written purchase policies; and

(4) The board of directors or the FCU's investment committee approves the purchase in advance.

The Board notes that under recent amendments to the RBC rule, complex credit unions with MSAs will also factor the criteria in § 702.104 to calculate their RBC requirements.[21]

The final rule 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 addition to paragraph (h) reflects the authority found in § 703.16(a) to provide loan-related services to members.

III. Legal Authority

Over decades, the NCUA has issued many regulations and opinions recognizing the authority of an FCU to engage in loan servicing activities. 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.[22] FCUs also have the authority to provide correspondent services, including loan servicing, to other credit unions under the incidental powers regulation.[23] 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.'' [24] During the part 721 rulemaking in 2001, the Board agreed with commenters that loan servicing and escrow services were examples of permitted correspondent services.[25] Furthermore, although the purchase of MSRs was prohibited under the Investment Rule, the Board recognized during the incidental powers 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.'' [26]

Therefore, the authority to provide mortgage loan servicing as a financial service to members, under the conditions above, has been in place since 2003.[27] FCUs are also permitted to provide mortgage loan servicing to others as a charitable contribution.[28] Further, under the NCUA's Credit Union Service Organization (CUSO) regulation, CUSOs [29] are expressly preapproved to provide loan support services, including loan servicing and debt collection services.[30]

The authority for FCUs to purchase MSAs is found in Section107(14) of the Act, which permits 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.'' [31] Given that MSAs are financial assets

[16] The Board did not propose in the NPR to remove any investment restrictions applicable to federally insured corporate credit unions under part 704. This final rule, therefore, does not alter the distinct investment authorities and prohibitions applicable to corporate credit unions under part 704.

[17] 80 FR 66626 (Oct. 29, 2015) and 84 FR 68781 (Dec. 17, 2019).

[18] 12 CFR 702.2 (effective Jan. 1, 2022).

[19] *See* Comptroller's Handbook for Mortgage Banking, version 1 Feb. 2014 at p. 64, fn.4; 86 FR 45824, 45846 (Aug. 16, 2021).

[20] Effective April 1, 2022, the NCUA's supervisory rating system will change from CAMEL to CAMELS. See 86 FR 59282 (Oct. 27, 2021). CAMEL ratings will be used to determine eligibility for those credit unions that do not have a CAMELS rating.

[21] 80 FR 66626 (Oct. 29, 2015) and 84 FR 68781 (Dec. 17, 2019). On December 16, 2021, the Board approved additional amendments to 12 CFR 702.104 pertaining to mortgage servicing assets.

[22] 12 CFR 701.23(e); 44 FR 27068 (May 9, 1979).

[23] 12 CFR 721.3(c).

[24] 66 FR 40845, 40850 (Aug. 6, 2001).

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

[26] 67 FR 78996, 78998 (Dec. 27, 2002).

[27] 68 FR 32960 (June 3, 2003).

[28] 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).

[29] 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).

[30] 12 CFR 712.5(h); 712.3(d)(5)(i)(A).

[31] 12 U.S.C. 1757(14).

that may be sold separately from their underlying mortgage loans, an FCU has the statutory authority to sell MSAs to, and purchase MSAs from, another credit union.

By the plain language of Section 107(14), FCUs may purchase MSAs only from other credit unions. Contrast the authority to purchase MSAs ''of another credit union'' [32] to an FCU's express statutory power to enter loan participation agreements with ''other credit unions, credit union organizations or financial organizations.'' [33] Under NCUA's loan participation rule, subject to certain conditions, an FCU can purchase a participation interest in a loan from a credit union, credit union organization, or financial organization, which means any federally chartered or federally insured financial institution or any state or federal government agency and its subdivisions.[34] As such, the Act makes a greater number of participation partner-types (sellers of loan participation interests) available to an FCU than is permitted to the FCU if it is purchasing MSAs.

Lastly, the Board has engaged in several rulemakings to amend its RBC rule to, among other changes, include a guardrail for complex credit unions that purchase MSAs.[35] The final rule includes a deduction to the RBC numerator for MSA balances that exceed 25 percent of the capital numerator with the remaining balance risk-weighted at 250 percent in the RBC denominator. As mentioned in the preamble of the 2015 RBC final rule,[36] the Board believes the risks of MSAs contribute to a high level of uncertainty regarding the ability of credit unions to realize value from these assets. In adopting the December 2021 amendments to the RBC rule, the Board determined that it was appropriate to add a risk-based numerator deduction to address the potential of complex credit unions purchasing MSAs from other FICUs.[37]

This rulemaking is promulgated pursuant to Section 120(a) of the Act,[38] which is a general grant of regulatory authority that authorizes the Board to prescribe rules and regulations for the administration of the Act.[39] In addition, Section 206 of the Act grants the Board broad authority to take enforcement action against a FICU or an ''institution-affiliated party'' [40] that is engaging, 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.[41] Congress chose not to define ''unsafe or unsound practices'' in the Act, leaving determinations regarding which actions are unsafe or unsound to the Board.

IV. Discussion of Public Comments Received on the Proposed Rule

A. Generally

In the NPR, the Board proposed to amend 12 CFR 703.14 to include the following three prerequisites in order for an FCU to purchase MSRs from a FICU:

(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 FCU's board of directors or investment committee approves the purchase in advance.

In response, the Board received eleven comment letters from two natural person FCUs, eight credit union leagues and trade associations, and one individual. All but one of the commenters supported the removal of the regulatorily imposed prohibition in the Investment Rule that currently prevents FCUs from purchasing MSRs. Several commenters stated that additional conditions should be considered or included in the final rule. However, two commenters urged against conditions that would limit the investment authority, suggesting that FCUs and FICUs should be solely responsible for managing their risk mitigation due to their ample experience of servicing their own mortgages, as well as selling mortgage loans to the government-sponsored enterprises (GSEs).[42] These commenters stated that the rules should be more expansive to include purchases of MSRs from parties other than FICUs.

One commenter suggested the rulemaking is premature. This commenter stated that it is paramount for FCUs to understand how MSR purchases could affect both long- and short-term earnings of an FCU, particularly if the FCU retains low margin MSRs, as well as the degree of negative convexity for the MSRs as an investment. This commenter noted that many assumptions go into deriving the underlying MSR value, requiring considerable judgment, and that many FCU supervisory personnel may lack understanding or expertise. The commenter concludes, however, that these concerns may be mitigated if an FCU applies a prudent retention strategy backed by organization policy and guidance.

In response to a question in the NPR seeking comment on whether the proposed rule would benefit an FCU's mortgage loan servicing operations, many commenters identified benefits to the expanded investment authority to include the purchase of MSRs. Most commenters believe that the proposed rule would provide flexibility for FCUs to operate their mortgage loan business and would provide FICUs another avenue to sell their MSRs, which could generate a higher selling price and keep the MSRs within the credit union system. Two commenters stated that the additional flexibility would allow smaller institutions that 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. Similarly, another commenter stated that MSRs can potentially provide an ongoing stream of income to an FCU's bottom line, given that the FCU understands and prepares for potential risks involved. Another commenter noted the benefits of mortgage servicing, which include a more positive member/borrower experience, new cross-selling opportunities, and additional revenue sources. Two commenters also found that the rule would encourage more cooperation between credit unions.

Several commenters stated that the proposed rule will offer FCUs opportunities to realize economies of scale. One commenter noted that smaller credit unions may seek to partner with their larger marketplace colleagues to enter the MSR

[32] Id.

[33] 12 U.S.C. 1757(5)(E).

[34] 12 CFR 701.22(a)–(b).

[35] 80 FR 66626 (Oct. 29, 2015) and 84 FR 68781 (Dec. 17, 2019). On December 16, 2021, the Board approved additional amendments to 12 CFR 702.104.

[36] 80 FR 66683.

[37] [Insert **Federal Register** citation to part 702 amendments approved on December 16, 2021]

[38] 12 U.S.C. 1766(a).

[39] 12 U.S.C. 1751–1795k.

[40] *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.'').

[41] 12 U.S.C. 1786.

[42] GSEs include the Federal Home Loan Banks, Fannie Mae, Freddie Mac, Farmer Mac, and the Federal Farm Credit System Corporation.

marketplace. A large FCU stated that FCUs that service their own mortgage loans devote significant resources to meeting the operational and compliance responsibilities associated with mortgage servicing. If these fixed costs can be spread over a larger mortgage servicing portfolio, FCUs will be able to execute their mortgage lending businesses more effectively. This commenter also noted that, while mortgage servicing is a complex undertaking, purchasing MSRs will not add incremental risk for FCUs or the National Credit Union Share Insurance Fund (NCUSIF) because the risks associated with this new authority are similar to those already assumed as part of mortgage lending. Rather than adding risk, MSRs will allow FCUs to better address the inherent liquidity and interest rate risks posed by mortgage lending, and such risk mitigation will better protect the NCUSIF. One commenter stated that 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. Finally, one commenter commended the agency's timing of the rulemaking as the elongated pandemic health emergency has resulted in increased deposit flows rendering additional investment options a welcome tool.

Six commenters explicitly supported the three conditions proposed for this investment activity, finding the criteria appropriate to an FCU's purchase of MSRs from FICUs. Two commenters stated that FCUs can put proper controls in place to adequately mitigate associated risks. One of these commenters stated that it is prudent to consider certain safeguards that would apply before an FCU is eligible to purchase MSRs, depending on the complexity of the FCU's business model and staff composition.

Two commenters believe the requirements that MSR purchases be made in accordance with the board of directors' written purchase policies and receive advance approval by the board or investment committee should help ensure that MSR purchases are managed and properly vetted by the FCU. One commenter, however, does not support the requirements that MSRs be purchased within the limitations set by the board of directors' written purchase policies and that an FCU's board of directors or investment committee approve MSR purchases in advance. This commenter stated that the advance approval condition would only delay transactions, create more paperwork for the volunteers on board of directors or investment committees, and likely not have a material impact on the decision of whether to purchase MSRs.

One commenter expressed concern that, if the underlying mortgage loans of the MSRs must be loans the FCU is empowered to grant before an FCU can purchase MSRs, this condition will limit the number of FCUs that may take advantage of the new investment authority. This commenter stated that, while the purchase of MSRs will allow FCUs the ability to market and offer their product and services to prospective members, an FCU with a ''closed field of membership'' would have a difficult time purchasing MSRs that fit into their field of membership. This commenter requests that NCUA clarify how an FCU with, a single-common bond field of membership, for example, can take advantage of this investment authority.

The Board believes that FCUs have demonstrated experience originating and servicing residential mortgage loans, including in the mitigation of the attendant operational and compliance risks of mortgage servicing. The Board agrees with the comments in support of the proposed investment authority, particularly in its benefits to the credit union system. The opportunity to purchase MSRs provides flexibility for FCUs to operate their mortgage loan businesses, as well as providing the opportunity for FICUs to sell their MSRs. As one commenter noted, a readily available control for FCUs is the use of third parties to perform valuations of servicing portfolios, not only to ensure that conformance with GAAP, but also to ensure that an independent, expert financial analysis is conducted to minimize risk through timely adjustments. For these reasons, the Board believes removing the prohibition in the Investment Rule is appropriate and consistent with safety and soundness.

In addition to the CAMELS rating requirement discussed below, the final rule adopts the three conditions provided in the NPR as proposed. To purchase MSAs from a FICU, an FCU must meet the following requirements:

(1) The underlying mortgage loans of the MSAs are loans the FCU is empowered to grant;

(2) The FCU purchases the MSAs within the limitations of the FCU's board of directors' written purchase policies; and

(3) The FCU's board of directors or investment committee approves the purchase in advance.

The final rule requires that the underlying mortgage loans to any MSAs purchased by an FCU must meet the same requirements and standards applicable to mortgage loans that the FCU could originate. This is the same standard applicable to FCUs when buying certain eligible obligations under § 701.23(b). Note that the eligible obligations rule does not require FCUs to purchase the loans of its members under § 701.23(b)(2), a rule adopted in accordance with § 107(14) of the Act.[43] When an FCU uses this authority to buy eligible obligations, the obligation must be in accordance with the FCU's loan authority under the Act, NCUA regulations, FCU Bylaws, and the FCU's internal policies. The loan, however, is not required to be of an obligation of a member of the FCU or a person within the FCU's field of membership. Likewise, the authority of an FCU to purchase MSAs from other FICUs is not limited to loans made to persons in the purchasing FCU's field of membership. In addition, like § 701.23, the final rule requires that an FCU purchase MSAs within the limitations of the FCU's board of directors' written purchase policies and that its board of directors or investment committee approve of the purchase in advance.

B. Compliance Risk Management

In the NPR, the Board requested comment as to whether FCUs have effective compliance management systems (CMS) to help them to comply with the consumer protection-related laws and regulations applicable to mortgage loan servicers if they purchase MSRs from other FICUs.

A majority of commenters believe that 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. While two commenters acknowledged the compliance and legal risks inherent in the acquisition of MSRs, they asserted FCUs that service mortgages they originated have long been able to manage these risks as part of their regular course of business. This includes maintaining expert compliance and legal personnel on staff, as well as engaging with outside counsel when necessary. Two commenters noted that FICUs have been selling mortgage loans to the GSEs for many years. Consequently, their CMS would not need much expanding to comply with the consumer protections that apply to the transfer and servicing of mortgage loans. One commenter stated that, while adjustments to CMS may be warranted

[43] See 77 FR 31981, 31987 (May 31, 2012) and 66 FR 15055, 15059 (March 15, 2001).

if an FCU expands its loan servicing operations, changes to comply with the consumer protections that apply to the transfer and servicing of mortgage loans will not be significant.

One commenter discussed the use of proper controls related to the purchase of MSRs and tools that FCUs can leverage to mitigate associated risks. This commenter stated that one control is for FCUs to invest in robust mortgage servicing software that is integrated with other in-house software, including the core system and loan origination system, to efficiently service mortgage loans. The commenter stated that the adoption of a comprehensive set of technologies is necessary for servicers to work efficiently and comply with regulations. The commenter also stated that, as FCUs consider upgrades to their CMS, specifically their mortgage lending quality control programs, any final rule should permit flexibility in examination findings because FCUs may need to amend existing CMS contracts and enhance staff training. Similarly, another commenter noted that FCUs will need to consider CMS upgrades, specifically to their mortgage lending quality control programs, and should consider the need to closely review custom loan documents, including promissory notes. FCUs may need to consider creating or hiring specialized due diligence teams to review loans to ensure they meet the NCUA's regulations and the FCU's own internal policies.

Another commenter stated that mortgage servicing operations should be certified or confirmed through third-party reviews and/or audits. Further, this commenter asserted that FCUs would need increased due diligence over third-party vendors that service mortgages and to secure insurance coverage sufficient to support possible losses. This commenter agreed that FCUs that decide to purchase MSRs should have appropriate expertise on staff to avoid problems. The commenter suggests NCUA may wish to take steps to develop a risk-rating matrix to measure performance and credit quality of loans in a selected pool.

The Board recognizes that FCUs have experience originating and servicing mortgage loans and managing their exposure to compliance risk through their CMS. An FCU that currently services mortgage loans that it originates is expected to have an effective CMS that addresses compliance with mortgage servicing laws and regulations, and includes the following components:

- Board and senior management oversight,
- Policies and procedures,
- Training,
- Monitoring,
- Member complaint response, and
- An audit function.

An effective CMS also promotes compliance with consumer protection-related laws and regulations and prevents consumer harm. Due to the existing and extensive consumer protection laws that are specific to mortgage loan servicing,[44] including those under Regulation X and Regulation Z, which are promulgated by the Consumer Financial Protection Bureau, the Board believes that it is not necessary to include additional consumer protections in the final Investment Rule.[45] However, the NCUA will use the examination process to assess the effectiveness of an FCU's CMS for compliance with consumer protection-related laws and regulations that apply to mortgage servicers, as appropriate.[46] Further, as appropriate, the NCUA will employ supervisory tools or take enforcement action to address any CMS deficiencies related to mortgage servicing that cause consumer harm. Moreover, the Board notes that any FCUs that currently operate under the small servicer exceptions to these rules will no longer benefit from the exemption from certain requirements if they begin to purchase MSAs from non-affiliate owners of the underlying mortgage loans.[47]

C. CAMELS Requirement

In the NPR, the Board requested comment as to whether the final rule should require FCUs to be ''well capitalized'' as defined in part 702, and whether, like the eligible obligations rule, an FCU should be well capitalized for a minimum of the six quarters preceding its purchase of MSRs. The Board further asked whether the final rule should limit eligibility for the authority to purchase MSRs from other FICUs to FCUs that have a composite CAMEL rating of 1 or 2 with a Management rating of a 1 or 2 for at least the last two examinations.

Three commenters specifically supported a requirement that an FCU be well capitalized in order to purchase MSRs from other FICUs. One commenter stated that not every investment vehicle is appropriate for all credit unions and additional criteria for an FCU to be eligible to purchase MSRs is needed, including criteria based on ''net worth'' or ''well capitalized'' as defined by NCUA regulations. Another commenter stated that, for the safety and soundness of an FCU purchasing MSRs, capitalization will be a prudent factor and that RBC rules at Tier 1 should apply. The third commenter stated that an FCU should be required to be ''well capitalized'' in order to purchase MSRs from FICUs and that capital levels should be sustained for at least six quarters before MSRs can be purchased from other FICUs.

One commenter opposed eligibility criteria based on a credit union's capital levels or CAMEL rating. This commenter stated that, 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. This commenter also noted that when FCUs are servicing a loan that they originate, they are not subject to conditions regarding their capital levels and CAMEL rating, so there is no need for any eligibility criteria if they were to purchase MSRs from an FICU. Another commenter also opposed using the CAMEL system as additional eligibility criteria. This commenter stated that the CAMEL system may be overly qualitative and could lead to unintended consequences for non-participating FCUs with a CAMEL 1 or 2 rating. This commenter suggested that FCUs could possibly suffer reputational harm if they chose not to participate in MSR purchases because interested parties might presume the FCU has a CAMEL 3 or 4 rating.

Two commenters stated that the rule should require FCUs to have a composite CAMEL rating of 1 or 2 and one of these commenters also supported a requirement that eligible FCUs also have a Management rating of a 1 or 2 for

[44] Servicers must comply with various laws to the extent that the law applies to the particular servicer and its activities, including but not limited to RESPA, 12 U.S.C. 2601, *et seq.* (Regulation X), TILA, 15 U.S.C. 1601, *et seq.* (Regulation Z), the SCRA, 50 U.S.C; 3901, *et seq.,* the Dodd-Frank Act (UDAAP provisions), 12 U.S.C. 5536(a)(1)(B), as well as other applicable Federal and State laws.

[45] For example, *see* 12 CFR 1024.17; 12 CFR part 1024, subpart C; 12 CFR 1026.20, .36, .40-.41.

[46] For example, *see https://www.ncua.gov/regulation-supervision/manuals-guides/federal-consumer-financial-protection-guide/compliance-management/compliance-management-systems-and-compliance-risk; https://www.ncua.gov/regulation-supervision/manuals-guides/federal-consumer-financial-protection-guide/compliance-management/lending-regulations/real-estate-settlement-procedures-act-regulation-x; https://www.ncua.gov/regulation-supervision/manuals-guides/federal-consumer-financial-protection-guide/compliance-management/lending-regulations/truth-lending-act-regulation-z; https://www.ncua.gov/regulation-supervision/manuals-guides/federal-consumer-financial-protection-guide/compliance-management/lending-regulations/servicemembers-civil-relief-act-scra.*

[47] *See* Supplement I to 12 CFR part 1026, Official Interpretations, 41(e)(4)(iii)—Small Servicer Determination.

at least the last two examination cycles before they can purchase MSRs.

In order to purchase MSAs from other FICUs, the final rule requires that an FCU have a composite CAMELS rating of 1 or 2, which must include a Management component rating of 1 or 2, assigned at the completion of the FCU's last full examination. Note that the final rule refers to the CAMELS rating instead of the CAMEL rating referred to in the preamble of the NPR because, effective April 1, 2022, the NCUA's supervisory rating system will change from CAMEL to CAMELS by adding the ''S'' (Sensitivity to Market Risk) component to the existing CAMEL rating system and redefining the ''L'' (Liquidity Risk) component. The Board determined that it was beneficial to add the ''S'' component in order to enhance transparency and allow the NCUA and federally insured natural person and corporate credit unions to better distinguish between liquidity risk (''L'') and sensitivity to market risk (''S'').[48] The effective date of the final rule, therefore, aligns with the effective date of the change to the rating system. If the rating for the last full examination of the credit union predates the change to the rating system that goes into effect on April 1, 2022, FCUs that received a composite 1 or 2 CAMEL rating with a Management component rating of 1 or 2 for their most recent full examination will qualify to purchase MSAs under the final rule, provided all of the conditions of the rule are met.

The Board believes the requirement that an FCU have received a CAMELS composite rating of 1 or 2, with a Management component rating of 1 or 2, for its most recent full examination is a fundamental precondition and safeguard for purchasing MSAs. A Management component rating of 2 ''indicates satisfactory management and board practices relative to the credit union's size, complexity, and risk profile.'' [49] For an FCU to achieve at least a CAMEL composite rating of 2, that FCU will have ''no material supervisory concerns and, as a result, the supervisory response is informal and limited.'' [50] An FCU meeting this requirement of the final rule generally demonstrates an appropriate level of sound management and operation necessary to address the attendant financial, operational, and compliance risks involved with purchasing MSAs and loan servicing activities. For these reasons, the Board believes that adding the additional classification requirement of ''well capitalized'' to the final rule would be redundant.

D. Concentration Risk

In the NPR, the Board requested comment as to whether the final rule should limit the amount of MSRs an FCU can hold to address concentration risk. Specifically, the Board asked whether any concentration limits in the final rule should include:

- A limit on the amount of MSRs held by an FCU using either 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;
- A limit set at the total amount of MSRs that an FCU may hold to no more than 25 percent of the FCU's net worth; or
- A concentration limit based on assets.

The Board also sought feedback from commenters on whether other standards should apply to address concentration risk.

Five commenters generally supported the Board addressing the concentration risk of MSRs held by FCUs. One commenter acknowledged that high concentrations in a particular asset, such as MSRs, can expose a credit union to undue risk and stated it may be appropriate to establish in the final rule a limit on the amount of MSRs that an FCU can hold to address concentration risk. Likewise, another commenter suggested that concentration risk should be evaluated. One commenter generally supports a limit on the amount of MSRs held by an FCU based only on the total amount of MSRs purchased. Further, this commenter also supported a concentration limit based on the total amount of MSRs that an FCU may hold using traditional metrics, such as assets. The commenter, however, opposed a limit on the aggregate amount of MSRs both purchased from other parties and retained by the FCU after the sale of the underlying mortgage loans.

Two commenters supported a concentration risk limit in some form to alleviate risks, possibly using a limit based on a percentage of the credit union's net worth, similar to NCUA's loan participations rule.[51] One of these commenters also offered two additional suggestions: (1) A limit set as a percentage of total loans under servicing to total assets, instead of using MSRs as a factor in the calculation, due to the potential valuation swings with MSR assets, or (2) as suggested by another commenter, bifurcating the concentration limitation between mortgages originated with servicing retained, and purchased loans with MSRs, as another way to separate the risk while not limiting the FCU's organic mortgage production.

One commenter found the suggested cap in the question, to limit the total amount of MSRs that an FCU may hold to no more than 25 percent of net worth, as unwarranted. The commenter stated the cap 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 FCUs are subject to a 25 percent aggregate mortgage limit. This commenter also stated the proposed 25 percent of net worth limit could have a disproportionate impact on modest sized FCUs.

One commenter opposed any concentration limits in the final MSR rule. This commenter stated that FCUs and FICUs should be able to set their own concentration limits internally, if they determine such limits are necessary after conducting a risk assessment. Further, a blanket concentration limit for the entire industry fails to account for the unique circumstances of each FCU and its membership and removes control over business decisions from credit union management.

The final rule does not include a concentration limit for MSAs. High concentrations in a particular asset can expose a credit union to undue risk and, as a general matter, credit union officials and management have a fiduciary responsibility to identify, measure, monitor, and control concentration risk.[52] Furthermore, the NCUA may review concentration risk as part of its supervisory activities to determine if an FCU's balance sheet reveals potentially high exposure related to MSAs. With regard to complex credit unions, however, the Board has recently taken regulatory action as part of its RBC rulemaking to prevent the excessive exposure of MSAs, similarly to rules adopted by the other federal banking agencies.[53] While non-complex credit unions are not subject to the RBC provisions addressing concentration risk, smaller FCUs are less likely to purchase MSAs from other FICUs and generally present a lower risk to the NCUSIF. As noted,

[48] 86 FR 59282 (Oct. 27, 2021).

[49] *https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/appendix-ncuas-camel-rating-system-camel.*

[50] Id.

[51] 12 CFR 701.22.

[52] *See* NCUA Supervisory Letter 08–01, ''Concentration Risk,'' *https://www.ncua.gov/files/letters-credit-unions/LCU2010-03Encl.pdf.*

[53] 80 FR 66626 and 84 FR 68781. On December 16, 2021, the Board approved additional amendments to 12 CFR 702.104.

the Board believes the agency's supervisory functions can sufficiently address concerns regarding MSA concentrations.

E. Liquidity Risk

To address liquidity risk, the Board requested comment as to whether the rule should limit the amount of months an FCU servicer is obligated to remit payments to the mortgage loan owner if the borrower fails to make payments. If so, the Board also asked whether the rule should specifically limit the amount of months to no more than three to six months of payments to the mortgage loan owner after a borrower fails to make payments.

Two commenters did not see a need for the rule to address liquidity risk as suggested in the NPR. While recognizing that the FCU purchasing MSRs may face liquidity risks, the commenters stated that an FCU is aware of these risks when buying MSRs and can perform its own cost-benefit analysis. One commenter stated that FCUs that have demonstrated the ability to comply with regulations pertaining to MSRs and to handle the risk of defaulting borrowers and remitting payments to MSR shareholders, despite being unable to collect from borrowers, should be permitted to purchase MSRs without any additional regulatory hurdles. This commenter suggests such considerations are no different from normal evaluations of safety and soundness for FCUs of any size or complexity. The other commenter stated the Board 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 FCUs.

Six commenters offered a range of comments regarding whether the rule should address liquidity risk. One commenter suggested the Board further examine whether limiting the number of months an FCU is obligated to remit payments to the mortgage loan owner when a borrower defaults would appropriately address any liquidity risk of the purchasing FCU. Similarly, another commenter stated while MSRs can pose liquidity risk, those risks should be evaluated, for example, the number of months an MSR is obligated to remit payments to the mortgage loan owner if the borrower is delinquent. Likewise, in recognizing the liquidity risk in servicing arrangements, another commenter stated the final rule could limit the number of months an FCU is obligated to remit payments to the mortgage loan owner if the borrower fails to make payments.

Two commenters explicitly supported a provision in the rule that establishes 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. One of these commenters also suggested a standardized agreement could be used between credit unions selling and purchasing MSRs to enhance transparency between the parties.

One commenter stated that payment remittance on MSRs should follow the requirements of the GSEs as opposed to other limitations on the remittance structure. In addition, this commenter stated an FCU should perform liquidity stress tests within the scope of the organization, including in relation to MSRs.

The Board believes FCUs that have a CAMELS composite rating of 1 or 2 with a Management rating of 1 or 2, should be capable of managing the liquidity risk associated with this investment authority. The Board therefore has not included a provision in the final rule to address liquidity risk but staff will issue future guidance as appropriate.

F. Application of Rule to Federally Insured State Chartered Unions (FISCUs)

The NPR also solicited comments on whether the safeguards and limitations in the final rule should be extended to all FICUs as a condition for obtaining and maintaining federal share insurance, in light of the risks associated with MSRs. One commenter, an advocate of additional guardrails or limitations in the final rule, supports extending the same safeguards and limitations applicable to FCUs to all FICUs. Another commenter also specifically supported extending the rule to all FICUs because the risk to the NCUSIF is the same for FCUs and FISCUs.

In addition, one commenter strongly recommended 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.

The final rule applies only to FCUs by removing the NCUA's previous prohibition against the purchase of MSRs in its investment regulation. It is not apparent to the Board that state laws applicable to FISCUs widely provide for similar investment authority, although most state regulators can grant parity for state-chartered credit unions so those institutions may engage in the same activities authorized for FCUs. Further, to the extent that FISCUs engage in the purchase of MSAs from other parties, the conditions on these assets under the RBC requirements in part 702 apply to all complex federally insured credit unions. The NCUA will monitor this activity in FISCUs and will consider whether to extend § 703.14(l) to FISCUs under part 741, subpart B, if necessary. Finally, the Board notes that it is committed to the agency's continued communications with state regulators to address supervisory concerns, including those related to MSAs.

V. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.[54] For purposes of this analysis, the NCUA considers small credit unions to be those having under $100 million in assets.[55] The rule imposes no requirement or costs on small entities and only expands the types of investments an FCU can make by including MSAs. The conditions in the final rule for a threshold CAMELS rating and written investment policies are prerequisites for other investment activities, therefore the Board does not expect these requirements to entail substantial regulatory burden. Accordingly, the associated cost is minimal. The NCUA certifies the 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.[56] 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 rule does not contain any new information collection requirements that require approval by OMB under the PRA. Current recordkeeping requirements are covered under OMB control number 3133–0133.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to

[54] 30 5 U.S.C. 603(a).

[55] Interpretive Ruling and Policy Statement 03–2, 68 FR 31949 (May 29, 2003) as amended by Interpretive Ruling and Policy Statement 13–1, 78 FR 4032 (Jan. 18, 2013).

[56] 44 U.S.C. 3507(d); 5 CFR part 1320.

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 rule 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 this rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[57]

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) generally provides for congressional review of agency rules.[58] A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a ''major rule.'' The NCUA does not believe this rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. As required by SBREFA, the NCUA will submit this final rule to OMB for it to determine if the final rule is a ''major rule'' for purposes of SBREFA. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

List of Subjects

12 CFR Part 703

Credit unions, investments.

12 CFR Part 721

Credit unions, functions, implied powers.

[57] Public Law 105–277, 112 Stat. 2681 (1998).

[58] 5 U.S.C. 551.

By the National Credit Union Administration Board on December 16, 2021.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons discussed above, the NCUA Board amends 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 § 703.2 by removing the definition of ''Mortgage servicing rights'' and adding in its place a definition for ''Mortgage servicing assets'' to read as follows:

§ 703.2 Definitions.

* * * * *

Mortgage servicing assets mean those assets, maintained in accordance with GAAP, resulting from contracts to service loans secured by real estate (that have been securitized or owned by others) for which the benefits of servicing are expected to more than adequately compensate the servicer for performing the servicing.

* * * * *

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

§ 703.14 Permissible investments.

* * * * *

(m) *Mortgage servicing assets.* A Federal credit union may purchase mortgage servicing assets from other federally insured credit unions if all of the following conditions are met:

(1) The Federal credit union received a composite CAMELS rating of ''1'' or ''2,'' with a Management component rating of a ''1'' or ''2,'' for the last full examination;

(2) The underlying mortgage loans of the mortgage servicing assets are loans the Federal credit union is empowered to grant;

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

(4) The Board of Directors or Investment Committee approves the purchase.

§ 703.16 [AMENDED]

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

PART 721—INCIDENTAL POWERS

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

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

■ 6. Amend § 721.3 in paragraph (h) by revising the last sentence 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.

* * * * *

[FR Doc. 2021–27641 Filed 12–22–21; 8:45 am]

BILLING CODE 7535–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

Home Mortgage Disclosure (Regulation C) Adjustment to Asset-Size Exemption Threshold

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is amending the official commentary that interprets the requirements of the Bureau's Regulation C (Home Mortgage Disclosure) to reflect the asset-size exemption threshold for banks, savings associations, and credit unions based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Based on the 4.7 percent increase in the average of the CPI–W for the 12-month period ending in November 2021, the exemption threshold is adjusted to $50 million from $48 million. Therefore, banks, savings associations, and credit unions with assets of $50 million or less as of December 31, 2021, are exempt from collecting data in 2022.

DATES: This rule is effective on January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Willie Williams, Paralegal Specialist; Lanique Eubanks, Senior Counsel; Office of Regulations, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The Bureau is amending Regulation C,