No. 13-576

In the Supreme Court of the United States

NOMURA HOME EQUITY LOAN, INC., ET AL.,
PETITIONERS

v.

NATIONAL CREDIT UNION ADMINISTRATION BOARD, AS LIQUIDATING AGENT OF U.S. CENTRAL FEDERAL CREDIT UNION AND OF WESTERN CORPORATE FEDERAL CREDIT UNION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether 12 U.S.C. 1787(b)(14), which establishes "the applicable statute of limitations with regard to any action brought by the" National Credit Union Administration Board "as conservator or liquidating agent" for a failed credit union, provides the sole time limit applicable to federal securities-law actions brought against petitioners by the Board.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-71a) is reported at 727 F.3d 1246. The opinion of the district court (Pet. App. 75a-173a) is reported at 900 F. Supp. 2d 1222.

JURISDICTION

The judgment of the court of appeals was entered on August 27, 2013. The petition for a writ of certiorari was filed on November 8, 2013. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The National Credit Union Administration (NCUA) is an independent agency that regulates

federally chartered credit unions. 12 U.S.C. 1752a; see, *e.g.*, 12 U.S.C. 1766(a). Among its other duties, the NCUA is responsible in its regulatory capacity for administering the National Credit Union Share Insurance Fund and the Temporary Corporate Credit Union Stabilization Fund (the Funds), which are part of the Treasury and which protect the accounts of credit-union members nationwide. 12 U.S.C. 1782-1784, 1790e. The Funds are supported by deposits, premiums, and assessments paid by credit unions, 12 U.S.C. 1782(c), 1790e(d), which in turn are funded by credit-union members.

The National Credit Union Administration Board, which manages the NCUA, see 12 U.S.C. 1752a(a), has statutory authority to close credit unions that are insolvent or undercapitalized and to appoint itself as liquidating agent. 12 U.S.C. 1787(a)(1)(A) and (3)(A).[*] As liquidating agent, the NCUA succeeds to "all rights, titles, powers, and privileges of the credit union," 12 U.S.C. 1787(b)(2)(A)(i), including the authority to file suit and to defend actions on the credit union's behalf, 12 U.S.C. 1766(b)(3)(A). The NCUA's recoveries from actions it brings as liquidating agent protect the Funds by offsetting losses that result from an insured credit union's failure. 12 U.S.C. 1787(e).

In the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101-73, 103 Stat. 183, Congress established a special time limit that applies to suits brought by the NCUA as the conservator or liquidating agent of a failed credit union. § 1217(a), 103 Stat. 536-537. That provi-

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[*] Except where otherwise stated, this brief uses the term "NCUA" to refer to the agency's Board in its capacity as liquidating agent, which is distinct from its capacity as regulator.

sion, codified at 12 U.S.C. 1787(b)(14) and entitled "Statute of Limitations for Actions Brought by Conservator or Liquidating Agent," states:

> Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Board as conservator or liquidating agent shall be—
>
> (i) in the case of any contract claim, the longer of—
>
> (I) the 6-year period beginning on the date the claim accrues; or
>
> (II) the period applicable under State law; and
>
> (ii) in the case of any tort claim, the longer of—
>
> (I) the 3-year period beginning on the date the claim accrues; or
>
> (II) the period applicable under State law.

12 U.S.C. 1787(b)(14)(A). The statutory period begins to run on "the date of the appointment of the Board as conservator or liquidating agent" or "the date on which the cause of action accrues," whichever is later. 12 U.S.C. 1787(b)(14)(B).

FIRREA included an identical provision applicable to the Federal Deposit Insurance Corporation (FDIC), another federal agency that can take over failed financial institutions and bring suits on their behalf. § 212(a), 103 Stat. 232-233 (12 U.S.C. 1821(d)(14)); see 12 U.S.C. 1821(c). FIRREA's sponsor explained, with respect to the FDIC provision, that the "extended statute of limitations periods" should function to "preserv[e] * * * claims that would otherwise have been lost due to the expiration of hitherto applicable limitations periods." 135 Cong.

Rec. 18,866 (1989) (statement of Sen. Riegle); see Pet. App. 43a. The sponsor further observed that those extended periods would "significantly increase the amount of money that can be recovered by the Federal Government through litigation." 135 Cong. Rec. at 18,866 (statement of Sen. Riegle).

2. This case arises from the failure of two large corporate credit unions. Pet. App. 2a. In 2006 and 2007, those credit unions invested $1.74 billion in certain securities that were backed by pools of residential mortgage loans. *Id.* at 4a, 14a-16a. Nearly half of those mortgages suffered significant payment problems, and the credit unions sustained "staggering losses" on their investments. *Id.* at 15a-16a. In March 2009, the NCUA became the conservator of the credit unions, and in October 2010, it became their liquidating agent. *Id.* at 16a.

After investigating the events leading to the credit unions' failure, the NCUA determined that the mortgage-backed securities were "significantly riskier than represented" in the documents accompanying the offering of those securities. Pet. App. 16a (citation omitted). Although the offering documents had represented that "zero or near zero" of the borrowers would be late on their loan payments or default entirely, in fact a significant percentage of them "were all but certain" to do so. *Ibid.* The NCUA also determined that "the offering documents contained materially false and misleading statements about the credit worthiness of the mortgage borrowers and the underwriting practices used by originators of the mortgages." *Id.* at 16a-17a.

In June and November 2011, the NCUA filed suit on behalf of the credit unions against petitioners, a

group of financial institutions, alleging violations of state securities law as well as two provisions of federal securities law, 15 U.S.C. 77k, 77*l*(a)(2), relating to the offering of the mortgage-backed securities. Pet. App. 17a. Petitioners moved to dismiss on multiple grounds, including that the claims were time-barred. *Ibid.* The district court denied that motion in relevant part. *Ibid.*

Petitioners contended that, notwithstanding the special NCUA-specific time limits in Section 1787(b)(14), the NCUA's federal securities-law claims were barred by a time limit enacted in the 1930s and codified in 15 U.S.C. 77m. See Securities Act of 1933, ch. 38, Tit. I, § 13, 48 Stat. 84, as amended by Securities Exchange Act of 1934, ch. 404, sec. 207, § 13, 48 Stat. 908. Section 77m, entitled "Limitation of Actions," provides that "[n]o action shall be maintained to enforce any liability created under section 77k or 77*l*(a)(2) of this title unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence." Section 77m further provides that "[i]n no event shall any such action be brought to enforce a liability created under" Section 77k "more than three years after the security was bona fide offered to the public, or under" Section 77*l*(a)(2) "more than three years after the sale."

The district court rejected petitioners' argument, holding that Section 77m does not apply to suits brought by the NCUA as a liquidating agent. Pet. App. 105a-119a. The court observed that, under the plain language of Section 1787(b)(14), "'any action' brought by [the NCUA] is covered by the provisions

of" that NCUA-specific statute. *Id.* at 108a. The court reasoned that Section 1787(b)(14)'s "broad" language "should be read to include statutory claims," such as the federal securities-law claims asserted here. *Ibid.* The district court rejected petitioners' contention that Section 77m's three-year time limit, which the court considered to be a "statute of repose" that "operates without regard to the date of injury or date of discovery," should apply to suits by the NCUA even if Section 77m's one-year time limit does not. *Id.* at 112a-117a.

3. The district court certified its order for interlocutory appeal. Pet. App. 17a. The court of appeals granted review and affirmed. *Id.* at 1a-71a.

The court of appeals accepted petitioners' argument that the three-year time limit in Section 77m functions as a "statute of repose"—*i.e.*, a "fixed, statutory cutoff date, usually independent of any variable, such as a claimant's awareness of a violation," that "creates a substantive right in those protected to be free from liability after a legislatively determined period of time." Pet. App. 21a-22a (internal quotation marks and citations omitted); see *id.* at 20a-23a. The court concluded, however, that this time limit could not bar the NCUA's claims here because Section 1787(b)(14) establishes the only time limitation applicable to suits brought by the NCUA as liquidating agent. *Id.* at 53a-54a. The court of appeals determined that "the plain meaning of the text best supports the conclusion that [Section 1787(b)(14)] supplants all other limitations frameworks, including both the one-year and three-year" time limits in Section 77m. *Id.* at 25a. The court observed that Section 1787(b)(14) "extends '*the* applicable statute of limita-

tions' for '*any* action brought by' NCUA on behalf of a failed credit union." *Id.* at 26a (quoting 12 U.S.C. 1787(b)(14)(A)). "By using these words," the court of appeals reasoned, "Congress precluded the possibility that some other limitations period might apply." *Id.* at 27a (quoting *FHFA* v. *UBS Ams., Inc.*, 712 F.3d 136, 142 (2d Cir. 2013)).

The court of appeals rejected petitioners' contention that, because Section 1784(b)(14) uses the term "statute of limitations," the NCUA would still be subject to time limits set forth in a statute of repose. Pet. App. 27a. The court explained that the term "statute of limitations" in Section 1784(b)(14) "refers to the time limits in [Section 1784(b)(14)] itself—subparagraphs (A) and (B)—not the time periods in other statutes that [Section 1787(b)(14)] replaces." *Id.* at 27a-28a. The court characterized petitioners' argument as "at best a strained reading that may be plausible only if the term 'statute of limitations' in [Section 1787(b)(14)] can be (1) understood narrowly and (2) somehow refers to time restrictions contained in statutes other than" Section 1787(b)(14). *Id.* at 28a.

The court of appeals further concluded that petitioners' interpretation of Section 1787(b)(14) should be rejected even "assum[ing] for the sake of discussion" that petitioners' reading was a "plausible" interpretation of the statutory text. Pet. App. 28a-54a. In the context of that further discussion, the court accepted petitioners' argument that the term "'statute of limitations' standing alone can be ambiguous." *Id.* at 40a. The court's "contextual analysis," however, showed that "the term is used broadly in [Section 1787(b)(14)] to cover statutory time limits generally, including repose periods." *Ibid.*; see *id.* at 29a-40a. The court

of appeals found, *inter alia*, that other provisions in Section 1787 "use the term ['statute of limitations'] in a way that is inconsistent with" a definition that would exclude statutes of repose. *Id.* at 39a.

The court of appeals also examined the relevant legislative history, including a statement by FIRREA's sponsor that the language of Section 1787(b)(14) "should 'be construed to maximize potential recoveries . . . by preserving to the greatest extent permissible by law claims * * * that would otherwise have been lost.'" Pet. App. 43a (quoting 135 Cong. Rec. at 18,866) (statement of Sen. Riegle)). The court rejected petitioners' argument that interpreting Section 1787(b)(14) to displace the three-year limit in Section 77m "amount[ed] to a repeal" of that latter time limit. *Id.* at 52a. The court explained that Section 1787(b)(14) "does not repeal" the Securities Act limitations period, but instead "creates a separate limitations framework that functions as a narrow exception for actions brought by NCUA on behalf of failed credit unions." *Ibid.*

The court of appeals also rejected petitioners' separate contention that Section 1787(b)(14) applies only to common-law contract and tort claims. Pet. App. 55a-64a. The court observed that, on its face, the statute "applies to 'any action brought by' NCUA." *Id.* at 56a (quoting 12 U.S.C. 1787(b)(14)). The court concluded that the terms "any tort claim" and "any contract claim," which are used to describe the relevant time limits, encompass statutory as well as common-law claims. *Id.* at 57a-60a. The court further explained that "[a]pplying [Section 1787(b)(14)] to statutory claims serves the statute's purpose by providing NCUA sufficient time to investigate and file

all potential claims once it assumes control of a failed credit union." *Id.* at 60a.

The court of appeals also noted that Congress had derived the language of Section 1787(b)(14)—including its division of claims into "tort" and "contract" claims—from 28 U.S.C. 2415, "the general or default statute of limitations for claims brought by the United States." Pet. App. 61a. The court observed that "[w]hen Congress drafted [Section 1787(b)(14)], courts had often applied Section 2415 to statutory claims." *Id.* at 62a. Quoting Justice Frankfurter's observation that statutory language that is "obviously transplanted from another legal source * * * brings the old soil with it," the court of appeals concluded that Congress intended Section 1787(b)(14) to operate in the same way. *Id.* at 61a-62a (quoting Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947), as quoted in *United States* v. *Adame-Orozco*, 607 F.3d 647, 654 (10th Cir.), cert. denied, 131 S. Ct. 368 (2010)).

Finally, the court of appeals rejected petitioners' contention that Section 1787(b)(14) applies only to state-law claims and not to federal-law claims. Pet. App. 64a-71a. The court explained that Section 1787(b)(14) "expressly covers 'any action' and does not expressly exclude any type of claim from its coverage." *Id.* at 66a. The court also recognized that, although Section 1787(b)(14) allows the NCUA to invoke a time limit under "State law" that is longer than the default three- or six-year time limit in Section 1787(b)(14) itself, the default time limit "is plainly not limited to state-law claims." *Ibid.* The court of appeals additionally observed that Section 1787(b)(14) "sets a limitations period for 'any action' brought by a

federal agency in its capacity as conservator or liquidating agent of insolvent or undercapitalized *federally* insured credit unions." *Id.* at 67a. The court reasoned that, "[i]f Congress had meant to preserve the NCUA's ability to pursue only state claims, while excluding the many potential federal claims that would enable NCUA to fulfill its mission, it would have said so expressly." *Id.* at 67a-68a. The court also observed that, when Section 1787(b)(14) was enacted, "courts routinely applied" 28 U.S.C. 2415, on which Section 1787(b)(14) was modeled, "to federal claims." Pet. App. 68a.

ARGUMENT

The court of appeals correctly held that 12 U.S.C. 1787(b)(14) provides the sole time limit applicable to suits brought by the NCUA as liquidating agent. That holding does not conflict with any decision of this Court or any other court of appeals. Further review is not warranted.

1. a. Section 1787(b)(14) assists the NCUA in recovering funds on behalf of a failed credit union by providing that the NCUA will have at least three years after taking over the credit union to investigate and file any tort claims on the credit union's behalf. As the court of appeals explained, the statute "extends '*the* applicable statute of limitations' for '*any* action brought by' NCUA on behalf of a failed credit union." Pet. App. 26a (quoting 12 U.S.C. 1787(b)(14)(A)). And by directing that "'the applicable statute of limitations . . . *shall be*'" the one that Section 1787(b)(14) specifies, Congress made clear that Section 1787(b)(14)'s application "is mandatory." *Ibid.* (quoting 12 U.S.C. 1787(b)(14)(A)). Congress thus ruled out the possibil-

ity that claims covered by Section 1784(b)(14) could be barred by other time limits.

Congress enacted Section 1787(b)(14) as part of FIRREA, in response to a "widespread financial crisis," with the intent to "'prevent the collapse of the [financial] industry, attack the root causes of the crisis, and restore public confidence.'" Pet. App. 42a (brackets omitted) (quoting *United States* v. *Winstar Corp.*, 518 U.S. 839, 844, 856 (1996)). The provisions extending the time for the FDIC and NCUA "to investigate and determine what causes of action [they] should bring on behalf of a failed institution," *FDIC* v. *Barton*, 96 F.3d 128, 133 (5th Cir. 1996), were "of the utmost importance" to that effort, 135 Cong. Rec. at 18,866 (statement of Sen. Riegle). By allowing the government to bring "claims that would otherwise have been lost due to the expiration of hitherto applicable limitations periods," those provisions "significantly increase the amount of money that can be recovered by the Federal Government through litigation" and "help ensure the accountability of the persons responsible for the massive losses the Government has suffered through the failure of insured institutions." *Ibid.* In this case, for example, one of the claims brought by the NCUA would have become time-barred approximately a month after the NCUA became the conservator, well before the NCUA could reasonably have become aware of the claim's existence and filed suit. C.A. App. 44 (NCUA's claims include a sale on April 24, 2006); *id.* at 47 (NCUA became conservator of the relevant credit union on March 20, 2009).

b. Petitioners do not dispute that Section 1787(b)(14) displaces at least *some* potential time

limits that might otherwise apply to claims brought by the NCUA. See, *e.g.*, Pet. 22. They contend (Pet. 17-25), however, that Section 1787(b)(14) cannot be the exclusive time limit in a case to which Section 77m's three-year time limit might otherwise apply. Relying primarily on this Court's decision in *National Ass'n of Home Builders* v. *Defenders of Wildlife*, 551 U.S. 644 (2007), they assert that applying Section 1787(b)(14) in that manner would violate the principle that "[i]mplied repeals 'will not be presumed unless the intention of the legislature to repeal is clear and manifest.'" Pet. 17-18 (quoting *Home Builders*, 551 U.S. at 662) (internal quotation marks and alterations omitted). That argument lacks merit.

The court of appeals cited *Home Builders* but correctly explained that Section 1787(b)(14) "does not repeal [Section 77m], either implicitly or otherwise." Pet. App. 52a. Instead, Section 1787(b)(14) "creates a separate limitations framework that functions as a narrow exception for actions brought by the NCUA on behalf of failed credit unions." *Ibid.* The court of appeals identified decisions in multiple circuits holding that the general principle disfavoring repeals by implication does not apply in such circumstances. See *Id.* at 52a-53a (citing *Harris* v. *Owens*, 264 F.3d 1282, 1296 (10th Cir. 2001), cert. denied, 535 U.S. 1097 (2002); *Strawser* v. *Adkins*, 290 F.3d 720, 733 (4th Cir.), cert. denied, 537 U.S. 1045 (2002); *Greenless* v. *Almond*, 277 F.3d 601, 608 (1st Cir.), cert. denied, 537 U.S. 814 (2002)). This Court has likewise declined to rely on that principle where, *inter alia*, the earlier statute would continue to have "the same effect" in all situations not directly contemplated by the later en-

actment. *Argentine Republic* v. *Amerada Hess Shipping Corp.*, 488 U.S. 428, 438 (1989).

As the First Circuit has explained, the presumption against implied repeals "is a product of * * * a belief that Congress, focused as it usually is on a particular problem, should not be understood to have eliminated without specific consideration another program that was likely the product of sustained attention." *Greenless*, 277 F.3d at 609 (quoting Cass R. Sunstein, *Interpreting Statutes in the Regulatory State*, 103 Harv. L. Rev. 405, 475 (1989)); see Pet. 24 (similar) (quoting *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 134 (1974)). That rationale has considerably less force in cases like this one, where the disputed question is whether the earlier statute (here, Section 77m) should continue to govern in the narrow and precise circumstance (an action by the NCUA in its capacity as conservator or liquidating agent) that Congress directly considered when it enacted the later statute (Section 1787(b)(14)). See *Greenless*, 277 F.3d at 609. The clear purpose and natural effect of Section 1787(b)(14) is to ensure that NCUA suits filed within the statutory deadline will be treated as timely, even if they would otherwise be time-barred by other provisions of law. That partial displacement of provisions like Section 77m is scarcely "implied"; it is Section 1787(b)(14)'s unambiguous purpose.

Contrary to petitioner's contention (Pet. 23-25), this Court's decision in *Home Builders* did not require the court of appeals to apply the principle disfavoring implied repeals in the particular circumstances of this case. In *Home Builders*, the Court addressed a statute under which a federal agency was required to

approve a certain type of application if nine statutory criteria were satisfied. 551 U.S. at 649. The Court considered, and ultimately rejected, the argument that a second statute "effectively operate[d] as a tenth criterion." *Ibid.* The Court observed that construing the second statute in that manner would "effectively repeal the mandatory and exclusive list of criteria" in the first statute; "replace it with a new, expanded list" in every instance; and "result in the implicit repeal of many additional otherwise categorical statutory commands." *Id.* at 662, 664. The Court determined that "the statutory language—read in light of the canon against implied repeals—does not itself provide clear guidance" about whether the first or second statute was controlling, *id.* at 666, and it deferred to the agency's reasonable harmonization of the conflicting statutory mandates, *id.* at 673.

Home Builders does not support petitioners' suggestion (Pet. 21) that an earlier-enacted statute governs whenever a later-enacted statute contains any ambiguity. Petitioners focus (Pet. 23-24) on the Court's statement in *Home Builders* that "implied amendments are no more favored than implied repeals." 551 U.S. at 664 n.8. Treating Section 1787(b)(14) as the exclusive time limit in this case, however, would not "amend" Section 77m. The result that the court of appeals reached here does not resemble the "amendment" rejected in *Home Builders*, which would have "partially overrid[den] *every* federal statute mandating agency action" to include an additional requirement. *Id.* at 664. And even in *Home Builders*, the canon disfavoring implied repeals was not held to dictate a particular result, but instead contributed to an ambiguity that was resolved by

deference to the responsible federal agency. *Id.* at 666. In this case, any ambiguity that the implied-repeal canon might create would be resolved by the interpretive rule that "statutes of limitations are construed narrowly against the government," which is "given the benefit of the doubt if the scope of the statute is ambiguous." *BP Am. Prod. Co.* v. *Burton*, 549 U.S. 84, 95-96 (2006).

c. The text, purpose, and legislative history all support the court of appeals' conclusion that Section 1787(b)(14) provides the exclusive time limit for the NCUA's suit against petitioners. As discussed above, Section 1787(b)(14) provides "*the* statute of limitations" for "*any* action" by the NCUA as liquidating agent, and its purpose is to allow sufficient time for the NCUA to investigate and file claims on behalf of failed credit unions. That direct language and focused purpose need not yield, in the particularized context of NCUA actions, to Section 77m's "general congressional policy against tolling of securities claims." Pet. 14 (quoting Gov't Amicus Br. at 28, *Lampf, Pleva, Lipkind, Prupis & Petigrow* v. *Gilbertson*, 501 U.S. 350 (1991) (No. 90-333); cf. *United States* v. *Romani*, 523 U.S. 517, 530-531 (1998) (discussing cases in which a "specific policy embodied in a later federal statute" was held to "control [this Court's] construction" of an earlier-enacted statute despite the earlier-enacted statute's "literal, unconditional text").

Petitioners' contrary arguments (Pet. 21, 25-29) lack merit. Petitioners contend (Pet. 25-28) that, because the time limit established by 12 U.S.C. 1787(b)(14) is denominated a "statute of limitations," it cannot displace the three-year time limit in Section 77m, which can be characterized as a "statute of re-

pose." As the court of appeals recognized (Pet. App. 35a), however, petitioners' argument "confuses what [Section 1787(b)(14)] *does*—sets an all-purpose time frame for NCUA to bring enforcement actions on behalf of failed credit unions—with what it *replaces*—the preexisting time frames to bring 'any action.'" The term "statute of limitations" in Section 1787(b)(14) simply describes the provision *itself*. It does not describe, or narrow, the set of circumstances in which that time limit is applicable. Petitioners suggest (Pet. 27-28) that it would be "passing strange" for Congress to displace statutes of repose that might otherwise apply to NCUA suits by providing a "statute of limitations" applicable to such actions. But specifying a "statute of limitations" applicable to "any action" by the NCUA as liquidating agent was a natural way to effectuate Congress's intent that all such suits be governed by a single time limit, which would function as a statute of limitations.

The court of appeals correctly observed, moreover, that courts (including this Court) have sometimes described Section 77m as a "statute of limitations," Pet. App. 48a-51a (citing, *inter alia*, *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 210 (1976)); that the term "statute of limitations" can sometimes encompass provisions that contain statutes of repose, *id.* at 29a-33a; and that the context of Section 1787 provides evidence that Congress used the term in that broader sense here, *id.* at 36a-39a. Petitioners' position that Section 1787(b)(14) does not displace statutes of repose would impermissibly bifurcate Section 77m. Under that position, Section 1787(b)(14) would displace one of the time limits in Section 77m (the one-year-from-discovery time limit), but not the other (the

three-year-from-sale limit). Congress did not render Section 77m—entitled "Limitation of Actions"—divisible in that fashion. Rather, as petitioners acknowledge, this Court has viewed Section 77m as an "indivisible determination by Congress as to the appropriate cutoff point" for certain claims, and the Court has recognized that it "would disserve that legislative determination to sever the two periods." Pet. 26 (quoting *Lampf,* 501 U.S. at 362 n.8 (1991).

Petitioners further contend (Pet. 28-29) that Section 1787(b)(14) provides the applicable time limit only for asserting state common-law claims and has no bearing on statutory claims or federal claims. As the court of appeals recognized, that contention cannot be squared with the provision's application to "*any action* brought by the Board as conservator or liquidating agent." Pet. App. 56a (quoting 12 U.S.C. 1787(b)(14)). "[R]ead naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *Ali* v. *Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) (brackets and citations omitted).

Petitioners are also wrong in arguing (*e.g.*, Pet. 30-31) that, because Section 1787(b)(14) describes particular time limits for "contract claim[s]" and "tort claim[s]," it does not apply to federal statutory claims. By specifying "the applicable statute of limitations for *any* action brought by the [Board] as conservator or liquidating agent," Congress foreclosed any interpretation that would limit Section 1787(b)(14) to a subset of such suits. And because the term "tort" has long been understood to encompass all non-contractual legal wrongs, Pet. App. 58a & n.23 (citing *Black's Law Dictionary* 1335 (5th ed. 1979)), the terms "tort claim"

and "contract claim" together encompass any possible claim that the NCUA might bring in an "action" as liquidating agent. A claim can sound in "tort" or "contract" even if it is conferred by statute. See, *e.g.*, *City of Monterey* v. *Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 709 (1999) ("[T]here can be no doubt that [42 U.S.C. 1983] claims sound in tort."); *Curtis* v. *Loether*, 415 U.S. 189, 195 (1974) ("A damages action under the [Fair Housing Act] sounds basically in tort."); *Schillinger* v. *United States*, 155 U.S. 163, 169 (1894) (considering patent infringement to be a "tort"); *United States* v. *P/B STCO 213*, 756 F.2d 364, 374 (5th Cir. 1985) (concluding that certain statutory claims were quasi-contractual and thus covered by 28 U.S.C. 2415(a)'s six-year statute of limitations for contract claims); *United States* v. *Limbs*, 524 F.2d 799, 802 (9th Cir. 1975) (same for a claim under a different statute).

Section 1787(b)(14) was modeled on 28 U.S.C. 2415, Pet. App. 11a-12a, which also referred to "tort" and "contract" time limits. "When Congress drafted [Section 1787(b)(14)], courts had "often applied Section 2415 to statutory claims," *id.* at 62a, and "routinely applied Section 2415 to federal claims," *id.* at 68a. Congress presumably expected Section 1787(b)(14) to have similar application. *Id.* at 62a; cf. *Jerman* v. *Carlisle, McNellie, Rini, Kramer & Ulrich L.P.A.*, 559 U.S. 573, 589-590 (2010) (recognizing that Congress generally intends to incorporate existing judicial interpretations of statutory language when it places that language in a new statute). Contrary to petitioners' contention (Pet. 29), Section 1787(b)(14)'s references to "State law" do not suggest that the provision is inapplicable to federal-law claims. The references

to state law simply ensure that Section 1787(b)(14) does not displace state-law limitations periods that are longer than the periods set forth in Section 1787(b)(14) itself. 12 U.S.C. 1787(b)(14)(A)(i)(II) and (ii)(II). Nothing in the statute suggests that Congress "meant to preserve the NCUA's ability to pursue only state claims, while excluding the many potential federal claims that would enable NCUA to fulfill its mission." Pet. App. 67a-68a.

Petitioners' reliance (Pet. 31-32) on *Jones* v. *Bock*, 549 U.S. 199 (2007), is misplaced. In *Jones*, this Court construed a statute providing that "'[n]o action shall be brought' unless administrative procedures are exhausted." *Id.* at 220 (quoting 42 U.S.C. 1997e(a)). The Court held that Section 1997e(a) should be applied claim by claim, so that exhausted claims could proceed even if filed simultaneously with unexhausted claims. See *id.* at 220-224. Similarly here, the statute of limitations in Section 1787(b)(14) should be applied separately to each claim asserted by the NCUA as conservator or liquidating agent, so that some claims in a particular suit may be timely (and therefore should be allowed to go forward) even though other claims in the same suit are time-barred. *Jones* does not cast doubt on the court of appeals' conclusion that the Section 1787(b)(14) limitations period *governs* all claims within a suit like this one. Indeed, it was undisputed in *Jones* that the exhaustion requirement for an "action" was applicable to every claim, such that "no unexhausted claim could be considered." *Id.* at 220.

2. Petitioners acknowledge (Pet. 34) that the circuits are not divided on the question presented. Indeed, the Second Circuit recently, and correctly, con-

cluded that an identically worded statute applicable to the Federal Housing Finance Administration (FHFA) displaced the three-year time limit in Section 77m. See *FHFA* v. *UBS Ams., Inc.*, 712 F.3d 136, 140-144 (2013). In reaching that conclusion, the court correctly rejected many of the same arguments that petitioners have raised here, concluding that Section 1787(b)(14) applies to both state and federal claims and that it supersedes other time limits regardless of whether they are characterized as statutes of repose. *Id.* at 142-144; see *Beckley Capital Ltd. P'ship* v. *DiGeronimo*, 184 F.3d 52, 57 (1st Cir. 1999) (reasoning that, under the FDIC analogue to Section 1787(b)(14), a suit by the FDIC would not be barred by a one-year state time limit, whether or not that state time limit was a typical "statute of limitations," but finding that rule inapplicable where suit was brought by the FDIC's assignee).

Petitioners suggest that this Court's intervention is warranted because the question presented will affect "dozens of pending cases." Pet. 16. But the possibility that the issue will be considered by additional circuits in short order counsels against, rather than in favor of, immediate review by this Court. In addition, this case presents the question in an interlocutory posture, "a fact that of itself alone furnishe[s] sufficient ground for the denial of the application." See *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); see *VMI* v. *United States*, 508 U.S. 946 (1993) (Scalia, J., respecting the denial of the petition for a writ of certiorari). Petitioners could still prevail on remand, including on different statute-of-limitations arguments. See Pet. App. 18a n.9. And if they ultimately are found liable, they can raise their

timeliness arguments—together with any other claims that may arise during the proceedings—in a single petition for a writ of certiorari following the entry of final judgment against them. See *Major League Baseball Players Ass'n* v. *Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam) (stating that this Court "ha[s] authority to consider questions determined in earlier stages of the litigation where certiorari is sought from" the most recent judgment).

3. Petitioners do identify (Pet. 32-34) a circuit conflict about the proper interpretation of a different statute. A provision of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) preempts the "commencement date" of a state "statute of limitations" in certain circumstances and replaces it with a "federally required commencement date." 42 U.S.C. 9658(a)(1) and (b)(2). After the petition in this case was filed, the Court granted certiorari in *CTS Corp.* v. *Waldburger*, No. 13-339 (Jan. 10, 2014), to resolve a circuit conflict about whether the CERCLA provision applies to state statutes of repose. In *CTS Corp.*, the government argued in the court of appeals that state statutes of repose are unaffected by 42 U.S.C. 9658(a)(1) and (b)(2). See Gov't C.A. Br. 7-29, *Waldburger* v. *CTS Corp.*, 723 F.3d 434 (4th Cir. 2013), cert. granted, No. 13-339 (Jan. 10, 2014).

This Court need not hold the petition here pending the disposition of *CTS Corp.*, because the decision below rests on a key textual feature of Section 1787(b)(14) that differs from the CERCLA provision at issue in that case. The CERCLA provision uses the term "statute of limitations" to refer to the type of state statute that the provision alters. 42 U.S.C.

9658(a)(1) and (b)(2). Section 1787(b)(14), by contrast, uses the term to describe its *own* "time limits * * * not the time periods in other statutes that [it] replaces." Pet. App. 28a. The court of appeals in this case correctly held that petitioners' "strained reading" of Section 1787(b)(14) as inapplicable to statutes of repose would "be plausible only if the term 'statute of limitations' in [Section 1787(b)(14)] can be (1) understood narrowly and (2) somehow refers to time restrictions contained in statutes other than" Section 1787(b)(14) itself. *Ibid.* Although this Court move could touch upon question 1 (the general meaning of the term "statute of limitations") in *CTS Corp.*, it will have no occasion to address question 2 (the role of the term "statute of limitations" in Section 1787(b)(14)).

The court below "assume[d] for the sake of discussion" that petitioner might be able to prevail on question 2. Pet. App. 28a. It thus proceeded to "examine the term 'statute of limitations' more closely" and conducted an analysis that "further demonstrate[d] the weakness of [petitioners'] interpretation" of Section 1787(b)(14). *Ibid.* But the court of appeals' answer to question 1—its conclusion that the term "statute of limitations" does not circumscribe the set of time limits that Section 1787(b)(14) displaces—is in itself sufficient to sustain the judgment. *Ibid.*; see, *e.g.*, *id.* at 35a-36a (concluding that even if Section 1787(b)(14) is itself a "statute of limitations" in the narrow sense advanced by petitioners, it could still "displac[e] a time limit that is not, i.e. a repose period"). That conclusion will not be affected by *CTS Corp.*, as even petitioners have recognized that the "language and surrounding text" and the "legislative

history" of the CERCLA provision at issue there differ substantially from Section 1787(b)(14)'s. Letter from Appellants to Clerk of Court, Response to NCUA Rule 28j Letter 2 (10th Cir. filed July 16, 2013).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 2014