SAR Title: Final Safety Analysis Report for the HI–STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: May 31, 2020.

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Dated at Rockville, Maryland, this 2nd day of December 2013.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Acting Executive Director for Operations.

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1090

[Docket No. CFPB–2013–0005]

RIN 3170–AA35

Defining Larger Participants of the Student Loan Servicing Market

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB) amends the regulation defining larger participants of certain consumer financial product and service markets by adding a new section to define larger participants of a market for student loan servicing. The Bureau is issuing the final rule pursuant to its authority, under the Dodd-Frank Wall Street Reform and Consumer Protection Act, to supervise certain nonbank covered persons for compliance with Federal consumer financial law and for other purposes. The Bureau has the authority to supervise nonbank covered persons of all sizes in the residential mortgage, private education lending, and payday lending markets. In addition, the Bureau has the authority to supervise nonbank ''larger participant[s]'' of markets for other consumer financial products or services, as the Bureau defines by rule. Rules defining larger participants of a market for consumer reporting and larger participants of a market for consumer debt collection were published in the **Federal Register** on July 20, 2012 (Consumer Reporting Rule) and October 31, 2012 (Consumer Debt Collection Rule). This final rule identifies a market for student loan servicing and defines ''larger participants'' of this market that are subject to the Bureau's supervisory authority.

DATES: Effective March 1, 2014.

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SUPPLEMENTARY INFORMATION: On March 28, 2013, the Bureau published a notice of proposed rulemaking proposing to define larger participants of a market for student loan servicing.[1] The Bureau is issuing this final rule to define larger participants of the identified market (Final Rule).

I. Overview

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[2] established the Bureau on July 21, 2010. Under 12 U.S.C. 5514, the Bureau has supervisory authority over all nonbank covered persons[3] offering or providing three enumerated types of consumer financial products or services: (1) Origination, brokerage, or servicing of consumer loans secured by real estate, and related mortgage loan modification or foreclosure relief services; (2) private education loans; and (3) payday loans.[4] The Bureau also has supervisory authority over ''larger participant[s] of a market for other consumer financial products or services,'' as the Bureau defines by rule.[5]

The Bureau is authorized to supervise nonbank covered persons subject to 12 U.S.C. 5514 of the Dodd-Frank Act for purposes of: (1) Assessing compliance with Federal consumer financial law; (2) obtaining information about such persons' activities and compliance systems or procedures; and (3) detecting and assessing risks to consumers and consumer financial markets.[6] The Bureau conducts examinations, of various scopes, of supervised entities. In addition, the Bureau may, as appropriate, request information from supervised entities without conducting examinations.[7]

The Bureau prioritizes supervisory activity at nonbank covered persons on the basis of risk, taking into account, among other factors, the size of each entity, the volume of its transactions involving consumer financial products or services, the size and risk presented by the market in which it is a participant, the extent of relevant State oversight, and any field and market information that the Bureau has on the entity. Such field and market information might include, for example, information from complaints and any other information the Bureau has about risks to consumers.

The specifics of how an examination takes place vary by market and entity. However, the examination process generally proceeds as follows. Bureau examiners initiate preparations for the on-site portion of an examination by contacting an entity for an initial conference with management, and often by also requesting records and other information. Bureau examiners will ordinarily also review the components of the supervised entity's compliance management system. Based on these discussions and a preliminary review of the information received, examiners determine the scope of an on-site examination and then coordinate with the entity to initiate the on-site portion of the examination. While on-site, examiners spend a period of time holding discussions with management about the entity's policies, processes, and procedures; reviewing documents and records; testing transactions and accounts for compliance; and evaluating the entity's compliance management system. As with any Bureau examination, examinations of nonbanks may involve issuing confidential examination reports, supervisory letters, and compliance ratings.

The Bureau has published a general examination manual describing the Bureau's supervisory approach and

[1] 78 FR 18902 (Mar. 28, 2013).

[2] Public Law 111–203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. 5301 *et seq.*).

[3] The provisions of 12 U.S.C. 5514 apply to certain categories of covered persons, described in subsection (a)(1), and expressly exclude from coverage persons described in 12 U.S.C. 5515(a) or 5516(a). ''Covered persons'' include ''(A) any person that engages in offering or providing a consumer financial product or service; and (B) any affiliate of a person described [in (A)] if such affiliate acts as a service provider to such person.'' 12 U.S.C. 5481(6).

[4] 12 U.S.C. 5514(a)(1)(A), (D), (E). The Bureau also has the authority to supervise any nonbank covered person that it ''has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity . . . to respond . . . is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.'' 12 U.S.C. 5514(a)(1)(C); *see also* 12 CFR part 1091 (prescribing procedures for making determinations under 12 U.S.C. 5514(a)(1)(C)). In addition, the Bureau has supervisory authority over very large depository institutions and credit unions and their affiliates. 12 U.S.C. 5515(a). Furthermore, the Bureau has certain authorities relating to the supervision of other depository institutions and credit unions. 12 U.S.C. 5516(c)(1), (e).

[5] 12 U.S.C. 5514(a)(1)(B), (a)(2); *see also* 12 U.S.C. 5481(5) (defining ''consumer financial product or service'').

[6] 12 U.S.C. 5514(b)(1).

[7] *See* 12 U.S.C. 5514(b) (authorizing the Bureau both to conduct examinations and to require reports from entities subject to supervision).

procedures. This manual is available on the Bureau's Web site.[8] As explained in the manual, examinations will be structured to address various factors related to a supervised entity's compliance with Federal consumer financial law and other relevant considerations. The Bureau has released procedures specific to education lending and servicing for use in the Bureau's examinations.[9] The Bureau also plans to use those examination procedures in supervising nonbank larger participants of the student loan servicing market.

This Final Rule establishes a category of covered persons that are subject to the Bureau's supervisory authority [10] under 12 U.S.C. 5514 by defining ''larger participants'' of a market for student loan servicing.[11] The Final Rule pertains only to that purpose and does not impose new substantive consumer protection requirements. Nonbank covered persons generally are subject to the Bureau's regulatory and enforcement authority, and any applicable Federal consumer financial law, regardless of whether they are subject to the Bureau's supervisory authority.

II. Background

On March 28, 2013, the Bureau published a notice of proposed rulemaking proposing to define larger participants of a market for student loan servicing (Proposed Rule).[12] The Bureau requested and received public comment on the Proposed Rule. The Bureau received 59 comments on the Proposed Rule from, among others, consumer groups, industry trade associations, companies, State-affiliated agencies, and individuals. The comments are discussed in more detail below in the section-by-section analysis.

The Proposed Rule included a test to assess whether a nonbank covered person is a larger participant of the student loan servicing market. Under this test, a nonbank covered person with an account volume exceeding one million, as described in the Proposed Rule, would be a larger participant of the student loan servicing market.

III. Summary of the Final Rule

The Bureau's existing larger-participant rule, 12 CFR part 1090, prescribes various procedures, definitions, standards, and protocols that apply with respect to all markets in which the Bureau has defined larger participants.[13] Those generally applicable provisions, which are codified in subpart A, also are applicable for the student loan servicing market described by this Final Rule. The definitions in § 1090.101 should be used, unless otherwise specified, when interpreting terms in this Final Rule.

As the Bureau has previously explained, it will include relevant market descriptions and larger-participant tests, as it develops them, in subpart B.[14] Accordingly, the Final Rule defining larger participants of the student loan servicing market amends Part 1090 by adding § 1090.106 in subpart B.

The Final Rule is the latest in a series of rules to define ''larger participants'' of specific markets for purposes of establishing, in part, the scope of coverage of the Bureau's nonbank supervision program. The Final Rule defines a student loan servicing market that would cover the servicing of both Federal and private student loans.[15] Under the Final Rule, ''student loan servicing'' means (1) receiving loan payments (or receiving notification of payments) and applying payments to the borrower's account pursuant to the terms of the post-secondary education loan or of the contract governing the servicing; (2) during periods when no payments are required, maintaining account records and communicating with borrowers on behalf of loan holders; or (3) interactions with borrowers, including activities to help prevent default, conducted to facilitate the foregoing activities. The Final Rule also sets forth a test that determines whether a nonbank covered person is a larger participant of the student loan servicing market.

To identify the larger participants of this market that are subject to the Bureau's supervision authority, the Bureau is adopting a test based on the number of accounts on which an entity performs student loan servicing. The Final Rule defines the criterion ''account volume,'' which reflects the number of accounts for which an entity and its affiliated companies were considered to perform student loan servicing as of December 31 of the prior calendar year.[16] An entity is a larger participant if its account volume exceeds one million. As prescribed by existing § 1090.102, any nonbank covered person that has qualified as a larger participant will remain a larger participant until two years after the first day of the tax year in which the person last met the applicable test.

Pursuant to existing § 1090.103, a person can dispute whether it qualifies as a larger participant in the student loan servicing market. The Bureau will notify an entity when the Bureau intends to undertake supervisory activity; the entity will then have an opportunity to submit documentary evidence and written arguments that it is not a larger participant. Section 1090.103(d) provides that the Bureau may require submission of certain records, documents, and other information for purposes of assessing whether a person is a larger participant of a covered market; this authority will be available to the Bureau for facilitating its identification of larger participants of the student loan servicing market, just as in other markets.

IV. Legal Authority and Procedural Matters

A. Rulemaking Authority

The Bureau is issuing this Final Rule pursuant to its authority under: (1) 12 U.S.C. 5514(a)(1)(B) and (a)(2), which authorize the Bureau to supervise larger participants of markets for consumer financial products or services, as defined by rule; (2) 12 U.S.C. 5514(b)(7), which, among other things, authorizes the Bureau to prescribe rules to facilitate the supervision of covered persons under 12 U.S.C. 5514; and (3) 12 U.S.C.

[8] CFPB Supervision and Examination Manual (Oct. 31, 2012), *available at http://www.consumerfinance.gov/guidance/supervision/manual/.*

[9] The CFPB Supervision and Examination Manual's Education Loan Examination Procedures can be accessed at *http://www.consumerfinance.gov/guidance/supervision/manual/.*

[10] The Bureau's supervisory authority also extends to service providers of those covered persons that are subject to supervision under 12 U.S.C. 5514. 12 U.S.C. 5514(e); *see also* 12 U.S.C. 5481(26) (defining ''service provider'').

[11] The Final Rule describes a market for consumer financial products or services, which the Final Rule labels ''student loan servicing.'' The definition does not encompass all activities that could be considered student loan servicing. Any reference herein to the ''student loan servicing market'' means only the particular market for student loan servicing identified by the Final Rule.

[12] 78 FR 18902 (Mar. 28, 2013).

[13] 12 CFR 1090.100–103.

[14] 77 FR 42874, 42875 (July 20, 2012) (Consumer Reporting Rule); 77 FR 65775, 65777 (Oct. 31, 2012), as corrected at 77 FR 72913 (Dec. 7, 2012) (Consumer Debt Collection Rule).

[15] As discussed below, student loans include those under Title IV of the Higher Education Act of 1965, 20 U.S.C. 1070 *et seq.,* and, with limited exceptions, those that are otherwise extended to a consumer in order to pay post-secondary education expenses.

[16] Although the Bureau is adopting account volume as the criterion for identifying larger participants of the student loan servicing market, that criterion is not necessarily appropriate for any other market that may be the subject of a future rulemaking. As the Bureau explained in the Consumer Reporting Rule and the Consumer Debt Collection Rule, the Bureau expects to tailor each test to the market to which it will be applied. 77 FR 42874, 42876 (July 20, 2012) (Consumer Reporting Rule); 77 FR 65775, 65778 (Oct. 31, 2012) (Debt Collection Rule).

5512(b)(1), which grants the Bureau the authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial law, and to prevent evasions of such law.

B. Effective Date of Final Rule

The Administrative Procedure Act generally requires that rules be published not less than 30 days before their effective dates.[17] The Bureau proposed that the Final Rule would be effective at least 60 days after publication and received no comments relating to the effective date. The Bureau adopts March 1, 2014, as the effective date for the Final Rule, which is more than 60 days after publication.

V. Section-By-Section Analysis

Section 1090.106—Student Loan Servicing Market

Section 1090.106 relates to student loan servicing. The student loan servicing market is composed of entities that service Federal and private student loans that have been disbursed to pay for post-secondary education expenses.[18] Students may obtain Federal student loans to fund their own post-secondary education expenses; a parent or guardian of a student may also obtain certain Federal student loans to fund that student's post-secondary education expenses.[19] A private student loan may be available to any individual willing to help secure funding for post-secondary education expenses.

Student loans are essential for many students to obtain post-secondary education and are a significant part of the nation's economy, as several industry and consumer group commenters recognized in their comments. In fact, during the last decade, a greater proportion of Americans than ever pursued post-secondary education; from fall 2000 to fall 2010, the number of undergraduate students increased by 45 percent.[20] At the same time, published tuition and fees at public four-year institutions have increased on average at an annual rate of 5.2 percent per year above the general rate of inflation.[21] In light of the rising cost of obtaining post-secondary education, American consumers have increasingly turned to student loans to bridge the gap between personal and family resources and the total cost of education. From the academic year 2001–2002 to 2011–2012, the average total borrowing per student increased by 55 percent.[22] According to one recent estimate, two-thirds (66 percent) of college seniors who graduated in 2011 had student loan debt, with an average of $26,600 for those with loans.[23] As of the end of 2012, the principal balance of outstanding student loan debt totaled approximately $1.1 trillion, and student loans were the largest category of non-mortgage debt in the United States.[24]

Student loan servicers play a critical role in the student loan market. Servicing, in general, is the day-to-day management of a borrower's loan. Servicers' duties typically include maintaining account records regarding a borrower, sending periodic statements advising borrowers about amounts due and outstanding balances, receiving payments from borrowers and allocating them among various loans and loan holders, answering borrower questions, reporting to creditors or investors, and attempting default aversion activities for delinquent borrowers. Servicers receive scheduled periodic payments from borrowers pursuant to the terms of their loans (or notification of such payments if borrowers are instructed to send payments to a lockbox service or other third party), and apply the payments of principal and interest and other such payments as may be required pursuant to the terms of the loans or of the contracts governing the servicers' work.

Student loan servicers also play a role while students are still in school. A borrower may receive multiple disbursements of a loan over the course of one or more academic years. Repayment of the loan may be deferred until some future point, such as when the student finishes post-secondary education. A student loan servicer will maintain records of the amount lent to the borrower and of any interest that accrues; the servicer also may send statements of such amounts to the borrower.

In short, most borrowers, once they have obtained their loans, conduct almost all transactions relating to their loans through student loan servicers. The Final Rule will enable the Bureau to supervise larger participants of an industry that has a tremendous impact on the lives of post-secondary education students and former students, as well as their families.[25]

Several commenters stated that it is essential to supervise this market due to the substantial impact that student loan servicers can have on a borrower's experience with student loans. One commenter also stated that greater oversight is needed due to the size of the market, uneven existing oversight, and the particular vulnerability of student loan borrowers. That commenter noted that education loan borrowers are not able to choose their loan servicers. It also observed that student borrowers, who are often young at the time of origination, may be signing loan agreements for the first time, and that disclosures to co-signers may be limited.

A number of consumer groups and individual commenters expressed concerns about this market. One commenter noted that according to the 2012 Annual Report of the CFPB Student Loan Ombudsman, 65 percent of complaints received by the Bureau about student loans related to

[17] 5 U.S.C. 553(d).

[18] Throughout this preamble, the terms ''student loan'' and ''post-secondary education loan'' are used interchangeably.

[19] *See* 20 U.S.C. 1078–2 (describing the Federal PLUS loan program, which, among other things, permits parents to obtain loans to pay for the cost of their children's education). A borrower who has one or more outstanding student loans may sometimes take out a new loan to refinance and consolidate those existing student loans. For purposes of the Final Rule, such a refinancing would also be considered a student loan.

[20] Coll. Bd. Advocacy & Policy Ctr., Trends in College Pricing 2012, at 4 (Oct. 2012).

[21] Coll. Bd. Advocacy & Policy Ctr., Trends in College Pricing 2012, at 7 (Oct. 2012).

[22] Coll. Bd. Advocacy & Policy Ctr., Trends in Student Aid 2012, at 4 (Oct. 2012).

[23] These figures reflect one nonprofit organization's estimate of the percentage of 2010–2011 bachelor's degree recipients with student loan debt at public and private nonprofit four-year colleges and the average cumulative debt level for those with loans. *See* The Inst. for Coll. Access & Success, Student Debt and the Class of 2011, at 2 (2012), *available at http://projectonstudentdebt.org/files/pub/classof2011.pdf.*

[24] As of September 30, 2012, the total Federal student aid loan portfolio amounted to $948 billion. U.S. Dep't of Educ., Federal Student Aid Annual Report 2 (2012), *available at http://www2.ed.gov/about/reports/annual/2012report/fsa-report.pdf.* The Department of Education and the Bureau have together estimated that American consumers owe more than $150 billion in outstanding private student loans. CFPB & Dep't of Educ., Private Student Loans 17 (Aug. 29, 2012) (report to the Senate Committee on Banking, Housing, and Urban Affairs, the Senate Committee on Health, Education, Labor, and Pensions, the House Committee on Financial Services, and the House Committee on Education and the Workforce), *available at http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.* Since the Proposed Rule was issued, the Board of Governors for the Federal Reserve has published data on total outstanding student loan debt that includes all holders of student loans, including the Federal government. Bd. of Governors of the Fed. Reserve Sys., Federal Reserve Statistical Release G.19 (Oct. 7, 2013), *available at http://www.federalreserve.gov/releases/g19/Current/g19.pdf.* Consistent with the estimates from the Department of Education and CFPB noted above, the Federal Reserve estimates principal balance of outstanding student loan debt as of December 31, 2012 to be approximately $1.1 trillion. *Id.*

[25] ''Servicing loans'' is a ''consumer financial product or service'' pursuant to the Dodd-Frank Act. *See* 12 U.S.C. 5481(15)(A)(i) (defining ''financial product or service,'' including ''extending credit and servicing loans''); *see also* 12 U.S.C. 5481(5) (defining ''consumer financial product or service'').

repayment and servicing. Consumer groups also provided examples that they said show dysfunction in the servicing process for both Federal and private student loans. Among other things, these groups noted that many borrowers have reported difficulties with repayment plans and forbearances. The groups attribute many of these complaints to the transfer of servicing within the William D. Ford Federal Direct Loan Program (as discussed below), which they say has resulted in many borrowers being placed in the wrong repayment plan or inadvertently missing payments. These groups also noted that borrowers have reported problems with private student loan servicers that claim to lack authority to approve relief options for borrowers.

One trade association took a different view, asserting that current laws, including the Higher Education Opportunity Act (HEOA) and the Truth in Lending Act (TILA) and their implementing regulations already protect student borrowers. This trade association asserted that the Bureau needs to explain the problem it is trying to address and the alternatives it considered before proceeding with this rulemaking.[26]

In response to these comments, the Bureau notes that it has wide discretion in choosing markets in which to define larger participants. The Bureau need not conclude, before issuing a rule defining larger participants, that the market identified in the rule has a higher rate of noncompliance, poses a greater risk to consumers, or is in some other sense more important to supervise than other markets. Indeed, 12 U.S.C. 5514(b)(1) recognizes that the purposes of supervision include assessing compliance and risks posed to consumers. Thus, the Bureau is not required to determine the level of compliance and risk in a market before issuing a larger-participant rule.[27]

The student loan servicing market is a reasonable choice for the Bureau. Because student loan servicing is an important activity that affects millions of consumers, supervision of larger participants of this market will be beneficial to both consumers and the market as a whole. Supervision of larger participants of the student loan servicing market will help the Bureau ensure that these market participants are complying with applicable Federal consumer financial law and will help the Bureau detect and assess risks to consumers and to the market. The supervision program thereby will further the Bureau's mission to ensure consumers' access to fair, transparent, and competitive markets for consumer financial products and services.

The existence of substantive Federal consumer financial laws that govern student loan servicing, including TILA, does not undermine the need for this rulemaking. Indeed, one purpose of the supervision program established by the Final Rule will be to oversee nonbank compliance with existing Federal consumer financial laws and assess risks to consumers in the student loan servicing market.

As one industry commenter recognized, establishment of supervision over larger nonbank participants in the student loan servicing market is also appropriate because banks that engage in student loan servicing already are subject to Federal supervision with respect to Federal consumer financial law.[28] Extending supervisory coverage to larger nonbank participants will help ensure that nonbank student loan servicers are subject to comparable scrutiny.

Student loan servicers handle three main types of post-secondary education loans on which borrowers still have outstanding balances; only two of these categories of loans are still available for new originations. First, some outstanding loans were made under the Federal Family Education Loan Program (FFELP).[29] FFELP loans were funded by private lenders, guaranteed by entities that are generally State-affiliated or not-for-profit entities, and reinsured by the Federal government. These loans are either serviced by the loan holders themselves or serviced pursuant to contracts with the loan holders. FFELP loans constituted the vast majority of Federal student loans before 2010. Second, pursuant to the 2010 SAFRA Act, new originations under FFELP were discontinued, and the U.S. Department of Education became the primary lender for Federal student loans, providing loans directly to borrowers under the William D. Ford Federal Direct Loan Program.[30] Direct loans are serviced by entities that contract with the Department of Education pursuant to Title IV of the Higher Education Act of 1965.[31] These entities are known as Title IV Additional Servicers (TIVAS).[32] Third, the student loan market includes private student loans made without Federal involvement. Private student loans are usually serviced either by the originating institutions or by other, nonbank entities. The same nonbank entities awarded servicing rights under the TIVAS contracts may also service both legacy FFELP loans and private student loans.

The student loan servicing market includes fewer than 50 nonbank servicers. As discussed below, approximately 33 guaranty agencies also engage in student loan servicing activities by providing default aversion services in connection with FFELP loans. The student loan servicing market

[26] A commenter urged the Bureau to conclude that, as a consequence of 12 U.S.C. 5517(e), the Bureau cannot exercise supervisory authority over collection attorneys acting as service providers to student loan servicers. The purpose of the Final Rule is to define the scope of the student loan servicing market, not to define the scope of supervision of any particular service provider. The Bureau's authority to supervise service providers to supervised nonbanks is established and regulated by the Dodd-Frank Act.

[27] A commenter argued that, because the student loan servicing industry is already subject to numerous Federal and State regulations, the Final Rule may ''create[ ] duplicative and potentially inconsistent compliance obligations.'' The commenter requested that the Bureau make clear that ''conduct that complies with applicable Federal regulations, including [Department of Education] regulations, also complies with the CFPB's requirements for enforcement or supervision purposes.'' But the Final Rule does not create any new ''compliance obligation'' of the type that concerns the commenter. Nothing in the Final Rule requires loan servicers to engage in, or refrain from, any particular conduct. Instead, the Final Rule identifies those persons that are subject to Bureau supervision as larger participants of the student loan servicing market. In addition, the requirements of Department of Education regulations are not coextensive with those imposed by the statutes and regulations enforced by the Bureau. Accordingly, compliance with the Department of Education's regulations does not necessarily satisfy a servicer's obligation to comply with Federal consumer financial laws.

[28] *See, e.g.,* 12 U.S.C. 5515(a) (establishing the Bureau's supervisory authority over very large depository institutions and credit unions and their affiliates). One of the Bureau's mandates under the Dodd-Frank Act is to ensure that ''Federal consumer financial law is enforced consistently without regard to the status of a person as a depository institution, in order to promote fair competition.'' 12 U.S.C. 5511(b)(4).

[29] 20 U.S.C. 1071 *et seq.*

[30] Public Law 111–152, §§ 2101–2213, 124 Stat. 1029, 1071–81 (2010). The Direct Loan Program actually began in 1992, *see* Public Law 102–325, §§ 451–52, 106 Stat. 569–76 (1992), but Federal Direct loans constituted only a small portion of Federal student lending before the enactment of the SAFRA Act in 2010. Two additional Federal programs under Title IV also authorize student loans. One offers grants to those who pledge to become teachers. If the recipients do not become teachers, then the disbursed funds are converted from grants to loans. *See* 20 U.S.C. 1070g *et seq.* A second finances loans made directly by certain post-secondary education institutions through their financial aid offices. *See* 20 U.S.C. 1087aa *et seq.*

[31] 20 U.S.C. 1087f(b).

[32] Most of the initial Direct Loan servicing business went to one entity: Affiliated Computer Services, Inc. (ACS). As the Department of Education began contracting with additional servicers, those additional servicers became Title IV Additional Servicers. In order to avoid confusion, when the Bureau uses the term TIVAS, the Bureau means to refer also to ACS, the original servicer of Federal Direct loans.

is heavily concentrated.[33] As measured by unpaid principal balance and by number of borrowers with loans being serviced, five nonbanks, the TIVAS, account for between approximately 67 percent and 87 percent of activity in the market.[34] There are only a few nonbanks in the middle tier of this market, each with a market share that is slightly greater than 1 percent. Many of the firms in this middle tier service loans placed with them by smaller nonbanks that are in the lowest tier of the market.[35] Finally, the lowest tier of the market includes a few dozen smaller nonbank servicers, each of which has only a fraction of a percent in market share.[36] Many of these smaller nonbanks are not-for-profit entities or closely associated with State or local governments, and at least half of them contract to other firms the servicing of the loans for which they have servicing rights.[37] As noted, approximately 33 guaranty agencies also participate in the servicing market by providing default aversion services, but available data indicate that these entities' default aversion activities do not constitute a significant share of the student loan servicing market.[38]

Section 1090.106(a)—Market-Related Definitions

Unless otherwise specified, the definitions in § 1090.101 should be used when interpreting terms in the Final Rule. The Final Rule defines additional terms relevant to the student loan servicing market. These terms include ''student loan servicing,'' which delineates the scope of the identified market; ''post-secondary education expenses''; ''post-secondary education loan''; and ''account volume.''

Account volume. The Bureau received a few comments related to the definition of ''account volume,'' which the Bureau proposed as the criterion that would determine whether an entity is a larger participant of the student loan servicing market.[39] For the reasons explained below, the Bureau has adopted the definition of ''account volume'' as proposed.

Section 1090.106(a) defines the term ''account volume'' as the number of accounts with respect to which a nonbank covered person is considered to perform student loan servicing and contains instructions for calculating account volume.[40] Account volume is based on the number of students or prior students with respect to whom a nonbank covered person performs student loan servicing. For example, a servicer might service a post-secondary education loan made to a student at the beginning of the student's time in college and paid back over a number of years after the student completed college. As another example, a servicer might service a post-secondary education loan made to a parent of a student to fund that student's education expenses.[41] In each of these examples, the student whose post-secondary education expenses a loan funded represents at least one account, even if the student is not an obligor on the loan.

However, the Bureau is aware that in some situations, a student or prior student may correspond to more than one account at a given servicer. For example, if a nonbank covered person is servicing a loan to a student and also a loan to that student's parent, the servicer will typically maintain separate accounts for the two loans. The student and the parent will each receive separate statements regarding their loans, and the servicer will remit payments on the loans to their respective holders. As another example, a student may receive loans from two different originators, or a given originator may securitize loans to the

[33] The Bureau has estimated entity-level data for nonbank student loan servicers as of December 31, 2012, based mainly on the 2012 Student Loan Servicing Alliance (SLSA) Servicing Volume Survey, to which most nonbank servicers reported data as of December 31, 2011. Depository institutions also service student loans, but they do not report to SLSA and will not be larger participants under this Final Rule. To construct its estimates for nonbank servicers, the Bureau augmented the data from SLSA's Servicing Volume Survey in several ways. (1) For the servicers that elected not to report their servicing information to SLSA, the Bureau estimated their servicing volume using Department of Education reports, shareholder presentations, and other market information. (2) The Bureau forecasted the growth of the largest student loan servicers' portfolios of Federal Direct loans on the basis of the overall growth in Federal Direct loans of 11.8 percent in 2012. *See* Dep't of Educ., Federal Student Aid Annual Report 2 (2012), *available at http://www2.ed.gov/about/reports/annual/2012report/fsa-report.pdf.* (3) The Bureau accounted for publicly reported market changes, including the Department of Education's borrower volume reallocations. (4) The Bureau also included in its estimate of a servicer's volume the borrowers for whose loans the servicer performs subservicing under contract with other servicers. The results of these calculations are entity-level estimates of total unpaid principal balance, borrower volume, and loan volume. In response to a comment discussed below, the Bureau has updated these calculations to include guaranty agencies that provide default aversion services. The resulting Bureau estimates are cited hereinafter as ''2012 SLSA Servicing Volume Survey, augmented by CFPB estimates.''

[34] *See* 2012 SLSA Servicing Volume Survey, augmented by CFPB estimates. Because the Bureau does not have data directly on servicers' ''account volume'' as defined in the Final Rule, the Bureau has used data on both unpaid principal balance and number of borrowers to estimate market share. The Bureau calculated the lower end of the market-share range using data regarding unpaid principal balance. In making this calculation, the Bureau used its estimate of $1.1 trillion in outstanding student loan debt as the denominator. Because the $1.1 trillion estimate includes unpaid principal balance serviced by both banks and nonbanks, and because the relevant market includes only servicing by nonbanks, the Bureau expects the TIVAS' actual share of the nonbank student loan servicing market to be somewhat larger than the lower end of the range. The Bureau calculated the upper end of the range using data reported to SLSA regarding the number of borrowers for whom loans are serviced. The calculation is slightly different from the Bureau's estimate when it issued the Proposed Rule because the Bureau has now factored in guaranty agencies that provide default aversion services. This likely overestimates market coverage because there may be nonbanks engaged in ''student loan servicing'' as defined in the Final Rule that do not report to SLSA and that are not included in the Bureau's augmented analysis due to insufficient data. Indeed, as one commenter noted, the 2012 SLSA Servicing Volume Survey is a voluntary survey of participating SLSA members' servicing volume and does not purport to be a definitive survey of the marketplace, though it does provide a snapshot of the participating servicers' volume as of December 31, 2011. However, the Bureau need not resolve these uncertainties regarding market share to issue the Final Rule. As discussed below, the approximately seven entities that will likely qualify as larger participants under the Bureau's Final Rule engage in substantially more market activity than the next largest participants, evaluated under any of the proposed criteria.

[35] *See* HCERA/SAFRA—Not-For-Profit (NFP) Servicer Program documentation, as of Sept. 25, 2013 (showing firms that contract servicing rights to other entities), *available at https://www.fbo.gov/spg/ED/FSA/CA/NFP-RFP-2010/listing.html.*

[36] *See* 2012 SLSA Servicing Volume Survey, augmented by CFPB estimates.

[37] *See* HCERA/SAFRA—Not-For-Profit (NFP) Servicer Program documentation, as of Sept. 25, 2013 (showing firms that contract servicing rights to other entities), *available at https://www.fbo.gov/spg/ED/FSA/CA/NFP-RFP-2010/listing.html.*

[38] In 2011, these 33 guaranty agencies reported a total of approximately $111 million in net default aversion fee revenue to the Department of Education. Fed. Student Aid, FY 2011 Summary of Guaranty Agency Financial Reports, *available at http://www.fp.ed.gov/attachments/publications/EDForms2000DataFY11AnnualReport.pdf* (summation of row AR–30). The guaranty agencies' default aversion activities are discussed in more detail in the Threshold section below.

[39] Several commenters advocated using the number of borrowers or the number of loans that a servicer handles to assess whether an entity is a larger participant. Those comments are discussed below, in connection with § 1090.106(b).

[40] The number of accounts generally will be counted as of December 31 of the prior calendar year. In general, a loan originator may open an account for a borrower at the beginning of an academic year and then disburse funds for the student's expenses at various points throughout the year. An originator may allocate the borrower's account to a servicer at the beginning of the academic year, even though the originator will be making further disbursements. If a servicer is responsible for servicing loans with respect to a student as of December 31, the corresponding account will be included in the calculation of account volume.

[41] For example, under the Federal PLUS loan program, a student's parent or guardian may take out a loan to pay the student's expenses. *See* 20 U.S.C. 1078–2. In the private lending market, the Bureau understands that, subject to underwriting criteria, post-secondary education loans may be available to any person who wishes to support a student's education.

student through two different securitization vehicles. These different holders of the student's loans may all retain the same servicer, which may maintain separate accounts for the different loans.[42] The servicer may send the student one consolidated statement or multiple statements, depending on the circumstances and its practices, and the servicer will remit payments on the loans to different loan holders. Under the Final Rule, the criterion for larger-participant status will recognize these separate accounts as additional servicing activity.

To provide a straightforward understanding of what constitutes an ''account,'' the Final Rule counts each separate stream of fees to which a servicer is entitled for servicing post-secondary education loans with respect to a given student or prior student.[43] The Bureau believes that student loan servicers are generally compensated, on a monthly basis, at a fixed rate for each account. For Federal Direct loans and Federally-owned FFELP loans, this compensation structure is determined by contract with the Department of Education, and the average fee rate for 2013 was estimated to be $1.68 per month per account.[44] In total, according to Bureau analysis of available Department of Education data and other sources, these loans make up greater than 50 percent of the total outstanding dollar volume of student loans and more than 90 percent of all new student loan originations.[45] For loans held by private entities (both private loans and FFELP loans), the rate may vary depending on the contracts governing a given servicer's business. But the same basic compensation structure appears to be common throughout the student loan servicing market. The Bureau therefore expects that counting the number of streams of fees a servicer receives for servicing loans with respect to a given student will be an appropriate way to represent the scope of the servicer's business with respect to that student.

One trade association commented that, while uncommon, in some instances, servicer compensation is calculated as a percentage of the aggregate principal balance of all loans serviced. This commenter asked whether such servicers have just one income stream. The Bureau recognizes that some nonbank covered persons may not receive servicing fees on a per-account basis. This might occur, for example, in the unusual circumstance where a servicer is compensated based on aggregate principal balance for all loans in its portfolio, regardless of the student or prior student to whom the loans correspond. Similarly, a nonbank covered person might not be compensated on a per-account basis for servicing of loans it holds. For such a person, each student or prior student whose education is funded by a loan will still count as one account under the proposed definition of ''account volume'' that the Bureau is adopting in the Final Rule, regardless of whether the student or former student is an obligor on the loan.

Another trade association stated that the Proposed Rule was not sufficiently clear to permit servicers to compute the number of accounts they service and posed two hypothetical questions that it said highlighted the rule's lack of clarity. First, the commenter asked whether there would be one or at least two income streams if a servicer is paid by a lender for servicing both FFELP loans and private education loans for a particular student or former student. Pursuant to the Final Rule, the answer would depend on whether the servicer receives separate fees for its services on the FFELP loans and private education loans, information that should be readily available to the servicer. If the servicer receives a fee for the FFELP loans and a separate fee for the private education loans of a particular borrower, there would be two accounts for this borrower. If the servicer receives one fee for all of the loans, there would only be one account for this borrower. Second, the commenter asked whether there would be one income stream or four income streams if a servicer is paid by a lender on a per-loan basis for servicing where a borrower has four outstanding private education loans. Because the Final Rule provides that a ''nonbank covered person has one account for each stream of fees to which the person is entitled,'' the hypothetical servicer would have four accounts for this borrower. The Bureau regards these consequences as straightforward applications of the definition of ''account volume'' and does not believe they show the definition to be unclear.

A commenter expressed concern about the Bureau's use of the term ''student or prior student'' in the Proposed Rule's section-by-section analysis and asked that the Bureau instead use ''borrower'' in the section-by-section analysis of the Final Rule in order to clarify that a parent borrowing on behalf of a student is a separate consumer. Other commenters also suggested using ''borrower'' in the definition of ''number of accounts'' and offered a possible definition of ''borrower.'' Paragraph (i) of the account volume definition in the Proposed Rule said: ''A nonbank covered person has at least one account for each student or prior student with respect to whom the nonbank covered person performs student loan servicing.'' The Bureau's use of the term ''student or prior student'' was not meant to suggest that a student and a parent borrowing on behalf of that student are generally the same consumer. However, the Bureau believes that it is important for the definition of ''account volume'' to refer to a ''student'' rather than a ''borrower.'' The difference between the two terms, as used in the definition of ''account volume,'' would be most significant for a servicer that does not receive compensation on a per-account basis. As discussed above, such a servicer has at least one account for each student with respect to which the servicer is servicing loans. The Bureau prefers ''student or prior student'' for these purposes because ''student or prior student'' provides a clear reference to a single individual and avoids the complexities, described in the § 1090.106(b) criterion discussion below, that may be associated with counting borrowers in situations

[42] In some instances, student loans that have been securitized in the secondary market may have a single loan originator but a separate legal holder for each loan. The Bureau understands that a securitization sponsor will typically use the same servicer for multiple securitizations.

[43] Ancillary fees (such as a late payment fee or a disbursement fee) that a servicer may receive in particular circumstances would not constitute a distinct stream of fees for performing student loan servicing.

[44] *See* Title IV Redacted Contract Awards 12–13, *available at https://www.fbo.gov/spg/ED/FSA/CA/FSA-TitleIV-09/listing.html.* The contract fixes monthly compensation on a per-borrower basis, and the compensation depends on the repayment status of each borrower being serviced. *See also* Student Aid Administration Fiscal Year 2013 Request, at AA–15, *available at http://www2.ed.gov/about/overview/budget/budget13/justifications/aa-saadmin.pdf.* The Student Aid Administration estimates the average cost per-borrower (which is equivalent to a servicer's per-account compensation for purposes of this Final Rule) to be $1.68 per month, based on the contractual prices and the proportion of borrowers with different repayment statuses. *Id.*

[45] Bd. of Governors of the Fed. Reserve Sys., Federal Reserve Statistical Release G.19 (Oct. 7, 2013), *available at http://www.federalreserve.gov/releases/g19/Current/g19.pdf;* CFPB & Dep't of Educ., Private Student Loans 17 (Aug. 29, 2012) (report to the Senate Committee on Banking, Housing, and Urban Affairs, the Senate Committee on Health, Education, Labor, and Pensions, the House Committee on Financial Services, and the House Committee on Education and the Workforce), *available at http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf;* Dep't of Educ., Federal Student Aid Annual Report 2 (2012), *available at http://www2.ed.gov/about/reports/annual/2012report/fsa-report.pdf.*

involving co-makers, co-signers, or endorsers.[46]

The definition attributes to a nonbank covered person the sum of the number of accounts of the person and its affiliated companies. Under 12 U.S.C. 5514(a)(3)(B), the activities of affiliated companies are to be aggregated for purposes of computing activity levels for rules—like the Final Rule—under 12 U.S.C. 5514(a)(1). In the consumer reporting and consumer debt collection markets, the Bureau implemented the aggregation called for by 12 U.S.C. 5514(a)(3)(B) by prescribing the addition of all the receipts of a person and its affiliated companies to produce the person's annual receipts. The Bureau proposed a similar calculation for the student loan servicing market. The account volume for each nonbank covered person would be the sum of the number of accounts serviced by that nonbank covered person and the numbers of accounts serviced by all affiliated companies.[47] The calculation would add together each account on which any affiliated company was providing student loan servicing. For example, if two affiliated companies each serviced the loans of 10 students, each of the two companies' account volume would be 20.[48] The calculation would be the same even if the companies service loans for some of the same students.

Several commenters expressed support for the Bureau's proposed method of aggregating accounts of affiliated companies for the purpose of calculating account volume, and the Bureau received no comments objecting to the proposed method.[49] For the reasons described above and in the Proposed Rule, the Bureau adopts the aggregation method as proposed.

Post-secondary education expenses. The Bureau proposed to define the term ''post-secondary education expenses'' to mean any of the expenses that are included as part of the cost of attendance of a student as defined in 20 U.S.C. 1087*ll.* The Bureau received support and no comments raising concerns regarding this definition and adopts the definition as proposed.

Post-secondary education loan. The Bureau proposed to define the term ''post-secondary education loan'' as an extension of credit that is made, insured, or guaranteed under Title IV of the Higher Education Act of 1965, 20 U.S.C. 1070 *et seq.,* or that is extended to a consumer with the expectation that the funds extended will be used in whole or in part to pay post-secondary education expenses.[50] The Bureau received a number of comments related to the definition of ''post-secondary education loan,'' and the Bureau is adopting the proposed definition in the Final Rule, with only technical changes, for the reasons described below.

Loans made to parents or other third parties. A number of consumer groups requested that the Bureau clarify that the definition includes loans made to parents or other third-parties to pay for a student's educational expenses. Some of the groups suggested that the Bureau replace ''consumer'' with ''borrower'' in the definition of ''post-secondary education loan'' and define ''borrower'' as ''a person who has obtained a post-secondary education loan for the borrower or a third-party.'' The Bureau recognizes that a loan may be made to a parent or guardian, or to another consumer, to fund the post-secondary education expenses of a student who is not a borrower of that loan. As the Bureau explained in the Proposed Rule, such a loan would be a ''post-secondary education loan'' under the definition as originally proposed because the term ''post-secondary education loan'' includes a loan made to a parent, guardian, or other consumer to fund the post-secondary education expenses of a student who is not a borrower. Thus, the Bureau concludes that it is not necessary to add a definition of ''borrower'' or to change the definition of ''post-secondary education loan.''

Open-end loans and loans secured by real property. Consumer groups also urged the Bureau to remove the definition's exclusions for open-end loans, as defined by the Bureau's Regulation Z, 12 CFR 1026.2(a)(20), and loans secured by real property (such as residential mortgages or reverse mortgages), if they are expressly marketed as student loans. These groups advocated for including such loans within the definition of ''post-secondary education loan,'' arguing that the goal should be to protect student loan borrowers as a whole, rather than creating technical distinctions. One trade association also urged that the Bureau, if it did not use the existing TILA definition as discussed below, include open-end credit plans in its definition of post-secondary education loan, noting that the needs of consumers who use open-end credit plans to pay for post-secondary expenses are essentially identical to those of users of traditional private student loans.

The Bureau recognizes that students and their families may use credit cards or home equity lines of credit to finance post-secondary education. However, for the reasons set forth below, the Bureau concludes that it is appropriate to exclude these two categories of credit from the defined category of ''post-secondary education loan,'' as originally proposed.

First, the Bureau believes that open-end loans and loans secured by real estate are sufficiently different from conventional student loans such that it would not be advisable to include them in the definition of ''post-secondary education loan.'' Such loans and post-secondary education loans as defined in this Final Rule are typically serviced separately due in part to the different features of these types of loans. The commenters suggested that the Bureau did not provide any evidence on this point, but they offered no reason to think the Bureau was mistaken.

Indeed, as the Bureau indicated in proposing the rule, multiple differences between these forms of credit suggest that a given servicer is unlikely to handle servicing, in the same portfolio and using the same procedures, of both student loans and either credit cards or home equity loans. The platforms that

[46] As noted above, the term ''student or prior student'' includes any student or prior student whose post-secondary education expenses are or were funded by one or more post-secondary education loan(s) that the servicer is servicing, regardless of whether the student or prior student is an obligor on the loan(s). If a servicer is not compensated on a per-account basis and a student and the student's parent(s) borrow independently of each other for the student's higher education expenses, the Bureau recognizes that by using ''student or prior student'' in the definition of account volume the student and the student's parent(s) will be counted as just one account. The Bureau believes that this circumstance would only occur rarely.

[47] Pursuant to the definition of account volume, each person's number of accounts as of the prior calendar year's December 31 will be aggregated together where two persons become affiliated companies in the middle of that prior year. As a further consequence of the definition, where two affiliated companies cease to be affiliated companies in the middle of a year, the account volume of each will continue to include the other's number of accounts until the succeeding December 31.

[48] This example assumes that each company is receiving only a single stream of fees for each of the 10 students.

[49] One commenter suggested that the Bureau prevent evasion by aggregating accounts of firms that act as agents or are under contract to another firm in addition to affiliated companies. The Bureau will apply the definition in 12 CFR 1090.101 to determine whether an entity is an ''affiliated company.'' In developing that definition, the Bureau considered whether to expand aggregation to include contractors or agents. 77 FR 42874, 42877 (July 20, 2012). The reasons the Bureau gave at that time for aggregating only the activity of ''affiliated companies,'' as defined in the rule, are valid for this market as well.

[50] Loans for refinancing or consolidating post-secondary education loans would also be considered post-secondary education loans. However, loans under an open-end credit plan or secured by real property are not post-secondary education loans.

are used to service post-secondary education loans, including private student loans, have in many instances evolved out of program-specific requirements, such as those of the Title IV/FFELP guidelines. Similarly, the platforms used for credit cards or home equity loans have been developed to suit the structures of those loans, the applicable regulatory obligations, and the requirements of loan holders. For example, servicing of loans secured by real estate must account for escrow payments, if applicable, and must comply with mortgage-specific regulatory requirements. Credit card servicers typically do not aggregate credit card accounts for single billing in the manner that a student loan servicer might, and unlike student loan servicers, credit card servicers post purchase transactions on a daily basis. In addition, credit card servicers must manage balances that revolve on a monthly basis. Meanwhile, even if incurred for education purposes, credit card debt and loans secured by real estate also typically lack some of the standard features of student loans, such as the initial period in which no payments are required.

Commenters stated that structural differences of this nature are an insufficient reason to exclude servicing of these other types of loans from the market and that the Bureau's rule should include in the market servicing of as many types of student loans as possible. The Bureau disagrees. The purpose of the Final Rule is to define the student loan servicing market for purposes of its nonbank supervision program. Even if some credit cards or home equity loans are marketed at origination for use in paying educational expenses, the servicing of such loans is nonetheless separate from the servicing of conventional student loans.

Second, pursuant to 12 U.S.C. 5514, the Bureau has supervisory authority, independent of the Final Rule, over nonbank covered persons that offer or provide origination or servicing of loans secured by real estate, including home equity loans or lines of credit. The Bureau also has supervisory authority regarding large portions of the credit card market through its supervision of very large banks and credit unions and their affiliates and service providers pursuant to 12 U.S.C. 5515. Indeed, one of the three examples cited by the commenters is a credit card issued by a large bank that already is subject to the Bureau's supervisory authority.

The commenters stated that even if such loans are serviced by entities already within the Bureau's authority those entities should be subject to supervision as student loan servicers under this larger participant rule. They asserted that the existence of supervisory authority over some of these entities under different auspices is irrelevant. The Bureau disagrees. If an entity is already subject to the Bureau's supervisory authority, the Bureau may examine the entire entity for compliance with all Federal consumer financial law and assess and detect risks to consumers or to markets for consumer financial products and services posed by any activity of the entity, not just the activities that initially rendered the entity subject to Bureau supervision.[51] In light of this existing authority, it is not necessary to define as larger participants entities that are otherwise under the Bureau's supervision, because the Bureau already can supervise the servicing activities in which such entities may engage regarding student loans.

As the commenter points out, there may be entities that are not currently supervised by the Bureau that service open-end loans for the purpose of financing a consumer's higher education costs. Because open-end loans are not widely offered for educational purposes, including the servicing of these loans in the market would not change the set of entities subject to Bureau supervision under any of the thresholds considered by the Bureau. But regardless, the Bureau believes that the considerations described above regarding how these loans differ from conventional student loans justify defining the market without including the servicing of these loans. For all of these reasons, the Bureau has decided not to include open-end and real-estate secured loans in the definition of ''post-secondary education loan.''

Truth in Lending Act definition of ''private education loan.'' The definition of ''post-secondary education loan'' helps determine the scope of the student loan servicing market identified by the rule, because the market activities involve servicing of ''post-secondary education loans.'' Two trade associations commented that the Bureau should align the definition of ''post-secondary education loan'' with the definition of ''private education loan'' that appears in 15 U.S.C. 1650(a)(7) and in Regulation Z, 12 CFR 226.46(b)(5). As in previous larger-participant rules, the Bureau does not intend its definitions to mirror the scope of definitions in TILA or other Federal consumer financial law. The Final Rule and TILA serve different purposes. TILA is a substantive consumer protection statute that regulates the origination and servicing of consumer credit. As amended by the Higher Education Opportunity Act,[52] TILA prescribes certain disclosure and timing rules that apply specifically to a category of loans, ''private education loans,'' defined in the statute. The Final Rule, by contrast, defines larger participants of a market for student loan servicing for purposes of delineating, in part, the scope of the Bureau's supervisory authority. The Bureau emphasizes that the definitions in the Final Rule are relevant only to that purpose and have no applicability to the scope, coverage, definitions, or any other provisions of TILA or any other law or regulation.

The definition of ''private education loan'' in Regulation Z that the commenters asked the Bureau to adopt differs in at least two ways from the definition of ''post-secondary education loan.'' First, Regulation Z, in accordance with the TILA definition, includes only loans that are ''not made, insured, or guaranteed under title IV of the Higher Education Act of 1965.''[53] Thus, Federal loans are not ''private education loans'' under TILA and Regulation Z. Second, Regulation Z further excludes loans that have a term of 90 days or less or that have a term of one year or less and no interest rate.[54]

The Bureau believes that servicing of both Federal loans and short-term loans should be included in the identified student loan servicing market. First, Federal loans are commonly serviced by private nonbank servicers, accounting for roughly 30 million borrowers at the seven largest nonbank servicers.[55] These companies typically use similar platforms for servicing both Federal and private loans, and servicing for both kinds of loans affects consumers in similar ways. Indeed, one of the two commenters that urged the Bureau to model its definition of ''post-secondary education loan'' on the TILA definition of ''private education loan'' simultaneously urged the Bureau to ensure that it supervises the servicing of Federal loans. This commenter argued

[51] *See* 12 U.S.C. 5514(b)(1); 77 FR 42874, 42880 (July 20, 2012) (''[I]f an entity is subject to the Bureau's supervisory authority, the Bureau may examine the entire entity for compliance with all Federal consumer financial law, assess enterprise-wide compliance systems and procedures, and assess and detect risks to consumers or to markets for consumer financial products and services posed by any activity of the entity, not just the activities that initially rendered the entity subject to Bureau supervision.'').

[52] Public Law 110–315, 122 Stat. 3078 (2008).

[53] 15 U.S.C. 1650(a)(7)(A)(i).

[54] 12 CFR 1026.46(b)(5).

[55] *See* 2012 SLSA Servicing Volume Survey, augmented by CFPB estimates.

that borrowers of Federal student loans should receive the same benefits of Bureau oversight as borrowers of private student loans. The Bureau agrees.

Second, servicing of short-term loans can give rise to many of the same concerns as longer-term loans.[56] For example, servicers of short-term loans may have obligations under the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.* And their work may pose risks to consumers, if, for example, they maintain account records inaccurately, fail to provide basic account information, or misinform consumers. The Bureau seeks in this Final Rule to address the impact that the servicing of student loans, including short-term loans, has on the lives of post-secondary education students and former students and their families.

The Bureau stresses that it need not identify specific risks associated with either type of loan before including servicing of such loans in the market. As the Bureau has observed before, it need not reach any conclusions about the extent of noncompliance in a market before defining larger participants of the market.[57] The Bureau has identified the student loan servicing market not just to include risky behavior, but to encompass a set of activities that are related. Servicers handling Federal loans and servicers handling short-term loans are all participating in the process of managing student loans and interactions with borrowers. Aside from the specific requirements applicable solely to ''private education loans'' under TILA, many other legal requirements apply to both these servicing activities and servicing of ''private education loans.'' To the extent that the risks attendant on servicing differ between loans that are or are not ''private education loans,'' the Bureau can adjust the scope and focus of its supervision activities accordingly.

One trade association also suggested that the Bureau's potential supervisory authority in this area is actually limited to ''private education loans.'' The association noted that 12 U.S.C. 5514(a)(1)(D) gives the Bureau supervisory authority over nonbank institutions that offer or provide loans that are ''private education loans'' as defined by TILA. Meanwhile, under 12 U.S.C. 5514(a)(1)(B), the Bureau defines larger participants of markets for ''other consumer financial products or services.'' The association argued that because paragraph (D) covers private education loans, student loans are not an ''other consumer financial product or service'' and cannot be the subject of a rule under 12 U.S.C. 5514(a)(1)(B).

The commenter's argument is unclear, because the market defined by the Final Rule includes the servicing of many loans that are not ''private education loans.'' This market activity is not ''offer[ing] or provid[ing] . . . private education loan[s],'' and it is therefore an ''other'' consumer financial product or service. The commenter suggested that the Bureau's authority under section 5514(a)(1)(B) is limited to entities that offer or provide loans that are not addressed elsewhere in section 5514(a)(1), as private education loans are. Thus, the commenter appears implicitly to have assumed that all activity relating to student loans is the same type of consumer financial product or service as the business of offering or providing a private education loan. In the commenter's view, as the Bureau understands it, section 5514(a)(1)(D) describes all the student loans that Congress wanted to be subject to the Bureau's supervisory authority. So ''other'' consumer financial products or services should be wholly distinct from the category of student loans for which Congress already decided the scope of the Bureau's authority.

The Bureau disagrees. The better reading, in light of the purposes of the provision, is that ''other'' simply means ''remaining'' consumer financial products or services, *i.e.* those with respect to which section 5514(a) does not expressly provide the Bureau supervisory authority.[58] The Final Rule, which identifies a market for servicing post-secondary education loans as defined in the Final Rule, achieves the statutory purpose: It defines the larger participants of a market that includes products and services other than ''offer[ing] or provid[ing] . . . private education loan[s]'' as defined in TILA.

Of course, the market defined by the Final Rule does include servicing activities related to private education loans as well. But the commenter offers no reason to think that a larger-participant rule must avoid any possible overlap with one of the categories expressly enumerated in section 5514(a)(1). The word ''other'' was not meant to limit the Bureau's rulemaking authority in this area. The purpose was simply to permit the Bureau to expand its supervisory authority beyond what section 5514(a)(1) explicitly prescribes. Consistent with that purpose, the Bureau can identify a market that both overlaps with the enumerated categories and includes other consumer financial products or services. Nonbank entities that offer or provide private education loans to consumers are already subject to the Bureau's supervisory authority. But the Bureau can reasonably take account of their activity in identifying a market for other products or services and deciding how to define larger participants of the market.

Finally, the commenters suggested that the difference between the definition of ''post-secondary education loan'' and the Regulation Z definition of ''private education loan'' might complicate implementation of the new Rule and industry compliance. These commenters did not explain how such consequences might arise, and the Bureau does not believe the Final Rule's definition will complicate either implementation or industry compliance. The commenters may be assuming that servicers will need to calculate whether they are larger participants to determine whether they need to comply. However, the Final Rule does not impose any substantive compliance obligations and does not require such a calculation. Generally, an entity will need to calculate its account volume only if it decides to dispute that it is a larger participant when the Bureau initiates supervision activity, such as an examination or a requirement that the company provide reports to the Bureau.

Student loan servicing. The Bureau proposed to define the term ''student loan servicing'' to mean receiving any scheduled periodic payments from a borrower pursuant to the terms of any post-secondary education loan, and making the payments of principal and interest and other amounts with respect to the amounts received from the borrower as may be required pursuant to the terms of the post-secondary education loan or of the contract governing the servicing; or, during a period when payment on a post-secondary education loan is deferred, maintaining account records for the loan and communicating with the borrower regarding the loan, on behalf of the

[56] Contrary to the suggestion of a commenter, a decision to include servicing of short-term loans in the market identified by the Final Rule does not constitute a repudiation of the reasons the Federal Reserve Board gave for excluding such loans from the category of ''private education loans.'' The Board concluded that the particular disclosure and timing requirements applicable to that category of loans are not necessary for the excluded short-term loans. 74 FR 41194, 41204–05 (Aug. 14, 2009) (noting, *inter alia,* that the waiting period required by the HEOA could delay disbursement of a short-term emergency loan). The Board did not suggest that short-term student loans warrant *no* consumer protections or administrative oversight. As noted below, such loans remain subject to other requirements of TILA and Regulation Z, as well as other applicable Federal consumer financial law.

[57] 77 FR 42874, 42883 (July 20, 2012) (Consumer Reporting Rule).

[58] *See* American Heritage Dictionary (5th ed. 2011) (listing, as the principal meaning of ''other,'' ''being the remaining ones of several'').

loan's holder. The proposed definition would also have made clear that student loan servicing includes interactions with a borrower to facilitate such activities. The Bureau received a number of comments on the proposed definition. In response to these comments, the Bureau is adopting the proposed definition with several adjustments, as explained below.

Activities required for ''student loan servicing.'' One commenter suggested that activity should not be included within the defined market unless the entity engages in all of the activities listed in the proposed definition of ''student loan servicing.'' The Bureau declines to adopt this suggestion because in some circumstances multiple entities may contribute in handling an account. For example, some companies may perform specialized servicing functions, such as the default aversion services discussed below, but may not perform other servicing operations. The Bureau believes the companies' activities should nonetheless be considered part of the identified market. Otherwise, servicers might divide their activities among different entities in an attempt to evade supervision. In addition, the activities of maintaining account records and communicating with a borrower take place during a period when no payments are due on the borrower's loan. Such a period may last for years, for example while the student is in school. The Bureau believes a servicer's activities during such a period regarding a borrower should be included in the market to the same extent as servicing activities performed when payments are due.

Lockbox services. The Bureau is changing the first sentence of the proposed definition of ''student loan servicing'' to address comments received relating to the use of a lockbox and similar services. A servicer noted in its comment that the first sentence of the definition refers to ''receiving'' payments even though servicers of Federally-owned loans have no direct role in the receipt of borrower payments. As the commenter explained, the collection of such payments is instead performed by the U.S. Treasury and its contractors, independent of the servicer. A trade association commenter raised a similar issue, expressing concern that organizations that provide some, but not all, of the activities listed in the proposed definition of ''student loan servicing'' would inappropriately be considered student loan servicers. The trade association stated that an organization should not be considered a servicer if it only accepts payments for a servicer (for example, by providing ''lockbox'' services).

The Bureau does not believe servicing activity should be excluded from the market merely by virtue of the fact that the servicer uses a lockbox service to collect payments. But the Bureau agrees that the lockbox service, *i.e.* the function of merely receiving payments for a loan holder and providing notification to a servicer, should not itself be considered student loan servicing for purposes of the Final Rule. To make clear that servicing with the assistance of a lockbox service is nonetheless market activity, the Bureau has inserted the words ''or notification of such payments'' after ''receiving any scheduled periodic payments from a borrower'' in the first sentence of the Final Rule's definition of ''student loan servicing.'' To make clear that a lockbox service that simply receives and remits money without handling borrowers' accounts is not a market participant, the Bureau has further revised this sentence of the definition by substituting ''applying payments to the borrower's account'' for ''making the payments of principal and interest and other amounts with respect to the amounts received from the borrower.'' By ''applying payments,'' the Bureau means the activity of adjusting the amount of principal, interest, or other amounts due on an account when payments are received from the borrower. A lockbox that merely receives payments and passes them on would not engage in ''student loan servicing'' under the Final Rule's definition because it does not apply payments (part of the defined activity in paragraph (i)) or communicate or otherwise interact with the borrower (as in paragraphs (ii) or (iii)).[59]

Guaranty Agencies and Default Aversion Services. A guaranty agency submitted a comment expressing concern that guaranty agencies could be interpreted to be engaging in ''student loan servicing.'' The commenter stated that the Bureau should exclude guaranty agencies by adding a definition of ''student loan servicer'' that is limited to entities performing student loan servicing at the direction of and under contract with the loan holder and owner.

As the commenter explained, guaranty agencies engage in a variety of activities, including assisting borrowers in applying for Federal student loans, completing program reviews, providing default aversion services, and administering and collecting payments on loans in default. The commenter asserted that guaranty agencies perform their functions on behalf of the Department of Education as fiduciaries and that those functions are unrelated to the Bureau's consumer protection mission. It also noted that guaranty agencies do not take payments for non-defaulted loans or grant deferments or forbearances, although they do conduct default aversion services prior to default and collect on defaulted loans.

The Bureau believes that servicing another servicer's account should be considered an activity that is within the market and that limiting the market definition to activities performed at the direction of and under contract with the loan holder and owner could be read to exclude these activities. Under certain circumstances, a servicer performs much or all of the activity described by the proposed definition, but it does so under contract with another servicer, which in turn is under contract to the loan's holders. The focus of the Bureau's supervision program is on servicing as it is provided to consumers. Therefore, for purposes of this rule, the Bureau believes the activities described above should be considered part of the market to the same extent as though the subservicer were under contract directly with the loan holder. The Bureau therefore has decided not to adopt the definition of ''student loan servicer'' suggested by the commenter.

The commenter also urged the Bureau not to include default aversion services in the student loan servicing market. The proposed definition of ''student loan servicing'' expressly mentioned such activity, and the commenter pointed to this aspect as another way the Bureau could refine the definition to exclude guaranty agencies. The Bureau believes it is appropriate to include default aversion services, even when conducted as a standalone servicing function, in the student loan servicing market. As the Proposed Rule explained, the Bureau regards default aversion activities as closely connected to the core aspects of student loan servicing—receiving and applying payments and maintaining account records and communicating with

[59] One commenter stated that entities that provide a third-party servicing system or communicate with borrowers but do not receive payments or maintain account records should not be considered to be engaged in ''student loan servicing.'' An entity that provides a software system but does not itself apply payments to specific borrower accounts or interact with borrowers would not be engaged in ''student loan servicing.'' By contrast, an entity that communicates with borrowers could be engaged in ''student loan servicing'' under the Final Rule, depending on the purpose of its borrower interactions. For example, the default aversion services that a guaranty agency provides pursuant to the Department of Education's regulations would be included in the market, as discussed in more detail below.

borrowers.[60] The Bureau recognizes that many student loan servicers perform or subcontract default aversion activities for loans that they are servicing. In addition, efforts to prevent default on post-secondary education loans can help save borrowers from the serious consequences resulting from default, which can include the accrual of thousands of dollars in penalties and fees and a damaged credit profile.[61] Default aversion can help protect consumers from certain risks; but, when not conducted in compliance with applicable law, default aversion can exacerbate those risks or create others. The Bureau expects to assess those risks in its supervision of larger participants of the student loan servicing market. These potential risks are not limited to entities that work for the owner of the note and instead result from the nature of the activity, regardless of any other functions the entities may perform.

The default aversion services provided by guaranty agencies in particular should be within the defined market because they are similar to those provided by traditional servicers. Under Department of Education regulations, a guaranty agency's default aversion services consist of ''activities . . . designed to prevent a default by a borrower who is at least 60 days delinquent and that are directly related to providing collection assistance to the lender.'' [62] A guaranty agency may contact a borrower and urge the borrower to bring the loan current. As part of these efforts, the agency may suggest forbearance, deferment, or various repayment plans. The agency may provide the borrower information that will help the borrower assess his or her eligibility for various options. The Bureau believes borrowers perceive these communications no differently from communications that the borrower has received from the servicer of the borrower's loan. Thus, when a guaranty agency provides default aversion services, it plays a role that is, from the borrower's perspective, likely to be indistinguishable from the role of a servicer.[63]

The Bureau believes the proposed definition of ''student loan servicing'' appropriately reflected these considerations. The proposed market definition included interactions with a borrower to facilitate the core servicing activities of receiving and remitting payments or maintaining records and communicating about them with a borrower.[64] The word ''facilitate'' indicates that the interactions included within the market are only those that are related to the core servicing activities and are performed in order to make those activities, particularly receiving payments, more likely to succeed. To clarify further that the purpose of an interaction with a borrower is important for determining whether it is ''student loan servicing,'' the Bureau is using the phrase ''conducted to facilitate,'' rather than simply ''to facilitate.'' The Bureau has also consolidated the final two sentences of the definition to ensure that it is clear that activities to prevent default on obligations arising from post-secondary education loans only constitute servicing if they are conducted to facilitate the core servicing activities described in paragraphs (i) or (ii) of the definition. The Bureau is also making several structural changes to the definition, relative to the Proposed Rule, to simplify the definition.[65]

Periods when no payment is required. The Bureau has adjusted the clause of the definition that addresses periods when payments are not required on the loan. As proposed, the definition would have included maintaining account records and communicating with a borrower ''during a period when payment on a post-secondary education loan is deferred.'' However, the Bureau intends this clause to apply during all periods when no payment is required on a loan, including, for example, periods of forbearance. To ensure this is clear, the definition as adopted refers to ''a period when no payment is required.''

Section 1090.106(b)—Test To Define Larger Participants

Criterion. The Bureau has broad discretion in choosing a criterion for assessing whether a nonbank covered person is a larger participant of a market within which the Bureau will conduct supervision. The Bureau proposed to use account volume as the criterion that determines which entities are larger participants of a market for student loan servicing. The Bureau invited comment on this proposal, and also asked for comment regarding two other possible criteria: total amount of unpaid principal balance and number of student loans serviced. The Bureau also invited suggestions for other criteria that commenters believed might be superior.

Comments from several consumer groups and one trade association supported using account volume as the measure of market participant size. On the other hand, a number of industry comments suggested that the Bureau instead use either number of borrowers or number of loans as the criterion. For the reasons set out below, the Bureau has adopted account volume as the criterion in § 1090.106(b), as proposed.

The Bureau believes that account volume is the appropriate criterion because, among other things, it is a meaningful measure of a student loan servicer's level of participation in the market and of the servicer's impact on consumers. First, the number of accounts on which a person performs servicing reflects the magnitude of the student loan servicer's interactions with consumers. Each account represents a regular series of interactions with at least one consumer. Account volume should therefore appropriately reflect the comparative amount of consumer impact of various servicers.[66] Second,

[60] One commenter requested that the Bureau clarify its description of a servicer's role in modifying a borrower's payment plan. The Bureau understands that certain servicers may have limited or no discretion in the loan amounts or interest rates modified. But the Bureau believes that even where the servicers' role involves only communicating the borrower's extenuating circumstances to the loan holder, informing the borrower, and modifying the borrower's account in accordance with directions from the loan holder, these services are closely connected to the core of servicing.

[61] Default on a Federal student loan has an additional deleterious consequence: A loan in default may not qualify for income-based repayment, an alternative plan under which a low-income borrower may be able to reduce his or her monthly payments.

[62] 34 CFR 682.404(a)(2)(ii).

[63] Further, if the default aversion services fail and the borrower defaults, the guaranty agency must return the fee it received for providing the services, 34 CFR 682.404(k)(2)(ii), and the guaranty agency shares a loss on the default because part of its function is to insure lenders against loss on student loans. Under Department of Education regulations, a guaranty agency guarantees no more than 97 percent of the unpaid balance of defaulted loans that were disbursed on or after July 1, 2006; a lender thus bears at least 3 percent of the loss. 34 CFR 682.401(b)(14). The guaranty agency's interests in the outcome of default aversion are comparable to those of the loan's primary servicer, which will lose from default because the loan servicer's functions (and compensation) with respect to the borrower will terminate.

[64] As discussed above, the definition the Bureau is adopting also includes receiving notice of payments, and it replaces remitting payments with applying payments to borrowers' accounts.

[65] A commenter expressed concern that the proposed definition of ''student loan servicing'' might be read to include third-party service providers that assist schools by providing default prevention services. Such services are often provided in an effort to improve the schools' cohort default rates under the Higher Education Act of 1965, 20 U.S.C. 1070 *et seq.,* and its implementing regulations, 34 CFR parts 600 *et seq.* Whether entities performing default aversion activities are engaged in ''student loan servicing'' under the Final Rule will depend on the purpose for which the services are performed. If they are done to facilitate the activities described in paragraphs (i) or (ii) of the Final Rule's definition, they will be ''student loan servicing.''

[66] While account volume may not correlate perfectly with the amount of consumer interaction, the Bureau believes the two are reasonably related. For example, although account volume may not reflect the number of co-signers on borrowers'

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because account volume is defined, in part, in terms of how many streams of fees a servicer receives with respect to a given student, the Bureau anticipates that the account volume criterion will correlate to the amount of compensation a person receives for its student loan servicing (and also to receipts and other comparable measures of market participation). Third, the degree of consumer impact increases directly when a servicer handles multiple accounts for a given consumer because the accounts are likely to represent loans held by different loan holders. In that situation, the servicer will be managing the consumer's dealings with multiple other companies. In addition, different loan holders may impose different standards and requirements for how the servicer performs its tasks, including the task of applying the consumer's payments to multiple accounts. The coordination needed can be complicated and represents an additional facet of servicing that account volume reflects.

Some commenters asserted that servicers do not currently track account volume based on fee streams and expressed concern that it will be burdensome for companies to track this information. This concern is misplaced for at least two reasons. First, as noted above, the larger participant rule does not require entities to calculate whether they are larger participants. Second, student loan servicers should be able to determine relatively easily whether their account volume meets the threshold, if the occasion to do so arises. Most market participants already assemble data on the number of loans they service and the number of borrowers of those loans. Many student loan servicers are members of the Student Loan Servicing Alliance, a trade organization, and have reported the sizes of their servicing programs to SLSA annually on both those bases.[67] A servicer's account volume would not necessarily be the same, for any particular servicer, as the number of its loans or the number of its borrowers. But because any student with respect to whom a nonbank covered person is performing student loan servicing corresponds to at least one account, a nonbank covered person's account volume will generally be at least as large as that person's number of borrowers.[68] Thus, any student loan servicer whose number of borrowers is above the threshold can expect that its account volume will also exceed the threshold.

Presently, few if any entities with less than one million borrowers are likely to have account volumes anywhere close to the threshold.[69] As discussed above, the detailed calculation of account volume generally reflects the number of accounts for which the servicer is receiving fees. The Bureau expects that servicers will readily be able to ascertain this number if the occasion arises to do so because servicers are presumably invoicing and expecting receipts on that basis. One servicer noted in its comment that such information is not typically aggregated or tracked across clients but acknowledged that servicers may track billable accounts for purposes of contract management and client invoicing.

Several industry commenters claimed that number of loans or number of borrowers would be a superior measure. These commenters did not agree on which of these measures would be preferable, but they generally suggested that account volume as a criterion would treat otherwise similar servicing portfolios differently.[70] The commenters noted that servicers are compensated based on different variables (e.g., per-borrower, per-loan, or per-account) depending on the lender and stated that two organizations' servicing portfolios that include the same number of borrowers and/or loans could, under the proposed definition, have a significantly different number of income streams depending on the method of compensation. Another commenter noted that using the Bureau's definition of account volume could produce different results for servicers that are employed by multiple student loan holders or securitization trusts as opposed to those that service multiple loans held by the same holder. For example, while one servicer may be administering four loans for a single borrower and receiving one stream of fees because all those loans are owned by the same entity, another servicer may be receiving four streams of fees for the borrower because the loans are owned by four separate entities.

The Bureau recognizes that two servicers whose portfolios contain the same number of borrowers or the same number of loans, according to their respective calculations, may have different numbers of accounts under the Bureau's definition. But because the Bureau does not regard number of borrowers or number of loans as the sole or proper measure of market participation, these apparent discrepancies do not mean that number of accounts is an improper measure. The Bureau has sought to develop a definition that appropriately represents a firm's participation in the market and overall impact on consumers and is sufficiently clear to apply when the Bureau assesses whether a firm is a larger participant in the market.

While the number of loans and the number of borrowers for which an entity performs servicing are both relevant to the entity's consumer impact and market participation, neither measure is superior to number of accounts. Although one commenter suggested that a servicer servicing four loans for four different holders should be treated the same as a servicer handling four loans for the same holder, the former portfolio will probably be substantially more complex than the latter and involve more consumer impact, as discussed above. The account volume criterion captures this additional consumer impact. Meanwhile, the number of borrowers does not measure the extent of a particular borrower's interactions with the servicer because the extent of a servicer's contact with a borrower will depend on various factors including the number of accounts or loans the borrower has and whether the borrower is the principal obligor on the account.

In addition, each of the alternative criteria would produce discrepancies between servicing portfolios. Different servicers may define and count ''loans'' in various ways, depending on the type of loans serviced and the details of the servicing contracts.[71] Thus, two portfolios that are the same in many important respects might nonetheless have different numbers of loans. With

loans, the Bureau believes that servicers' interactions with co-signers are relatively infrequent compared to their interactions with borrowers. A servicer typically deals with a co-signer only when the borrower has failed to make payments.

[67] *See, e.g.,* 2012 SLSA Servicing Volume Survey.

[68] The number of students with respect to whom a servicer is servicing loans is not identical to the number of borrowers, but the Bureau expects the differences to be fairly small.

[69] 2012 SLSA Servicing Volume Survey, augmented by CFPB estimates. Data from SLSA and other sources do not reveal any entities servicing between approximately 350,000 borrowers and 1.4 million borrowers.

[70] One servicer also noted that data are reported to the National Student Loan Data System (NSLDS) at the loan level. However, the data reported to the NSLDS do not include private loans.

[71] There is no industry-wide definition of a student loan because there is not a uniform system for reporting loans in the marketplace. Only Federal student loans are reported in the NSLDS. Although many servicers have reported their loan volume to SLSA, SLSA has not established standards for counting loans or borrowers. To establish a clear criterion for determining larger-participant status based on loan volume, the Bureau would need to choose a particular understanding of what constitutes a single ''loan'' and a single method of counting loans.

respect to number of borrowers, two trade associations proposed in their comments that loans that involve more than one borrower (co-makers) or that are co-signed or endorsed should be counted for a single borrower so as not to ''artificially'' inflate the number of borrowers attributable to a servicer. These comments did not address how the number of borrowers should be counted when individuals are responsible for multiple loans that involve a co-maker, co-signer, or endorser.[72] Whatever result the Bureau might specify for these various alternative criteria would produce different borrower counts for servicing portfolios that are arguably similar.[73]

As commenters noted, number of accounts does not correlate perfectly with number of borrowers or number of loans. But, compared to these other two measures, number of accounts seems the most appropriate basis on which to measure overall market participation. Of the three measures, account volume better reflects consumer interactions, servicer compensation, and the number of holders for the loans a servicer is handling with respect to each borrower.

The Bureau does not have data directly on servicers' account volumes, as defined in this Final Rule, but believes that the numbers of borrowers that servicers reported to SLSA in 2012 is an adequate proxy to enable the Bureau to analyze the market and select a threshold for larger-participant status. For purposes of its analysis, the Bureau noted in proposing the rule that, for most firms, the number of accounts may not differ substantially from the number of borrowers—the Bureau estimated that a firm's number of accounts generally is no more than about 50 percent greater than the number of borrowers it reports.[74]

Two commenters expressed concern about this part of the Bureau's analysis. One servicer asserted that the ''CFPB assumes that the ratio between loans and borrowers will be approximately two loans per borrower.'' The servicer also noted that it had calculated its own overall average loan-to-borrower ratio as 3.54 as of December 2012. It reported that its loan-to-borrower ratio varies among its portfolios based on portfolio characteristics: It estimated that it services 2.35 loans for each borrower of FFELP and private student loans, and 4.17 loans for each borrower of loans that it services as a TIVAS on behalf of the Department of Education. This commenter appears to misunderstand the Bureau's analysis. The Bureau did not assume a 2-to-1 ratio or any other ratio for *loans*-to-borrowers, but has instead estimated that the typical *account*-to-borrower ratio is unlikely to exceed 1.5 based on market-wide information. The numbers provided by the commenter are not to the contrary because they do not reflect account-to-borrower ratios but instead are estimates of the servicer's loan-to-borrower ratios. The commenter's *account*-to-borrower ratio would be substantially lower than the ratio it provided because each borrower corresponds to only one account for Federal Direct loans and Federally-owned FFELP loans and a servicer generally would not have more accounts than loans for other types of loans.

Another commenter noted that the ratio of number of accounts to number of borrowers could change in the future, depending on the state of the economy and changes to student loan policy at the Federal level. This commenter indicated that borrowers may go back to school or otherwise need to take out more loans in the coming years. The Bureau's analysis is not intended to estimate what the account-to-borrower ratio will be in the future. Instead, the ratio is merely to assist in translating the numbers of borrower that servicers reported in the 2012 SLSA volume survey into information about servicers' current account volume. In light of this purpose, the Bureau concludes that the 2012 SLSA volume survey is an adequate proxy to enable the Bureau to conduct a sufficient analysis of the market so that it can select a threshold for larger-participant status.

Threshold. The Bureau has broad discretion in setting the threshold above which an entity would qualify as a larger participant of the market for student loan servicing. The Bureau proposed that a nonbank covered person would be a larger participant of the student loan servicing market if the person's account volume exceeded one million. The Bureau received a number of comments on the proposed threshold. In light of the comments, and for the reasons stated below, the Bureau adopts the proposed threshold in the Final Rule.

As discussed above, the Bureau does not have precise data on market participants' account volumes calculated in accordance with the Final Rule's definition. However, the number of a servicer's accounts, under the Final Rule's definition of ''account volume,'' is generally no smaller than the number of borrowers whose loans it is servicing. In addition, the Bureau believes that in general the number of accounts should be no greater than the number of loans (if any) that a servicer has reported to SLSA. These two figures, therefore, provide estimated outer bounds for a given servicer's number of accounts with a sufficient degree of precision to enable the Bureau's threshold-setting analysis. According to the 2012 SLSA volume survey, seven nonbank entities each serviced the loans of more than

[72] For example, it is unclear how many unique borrowers a family would represent if the parents were co-makers on loans for education expenses for each of their two children, endorsed additional loans taken out by one of their two children for the child's education expenses, and also each had loans taken out on their own for their own education. One trade association also noted that with respect to Federal Parent PLUS loans and some private education loans, the student may not be considered the borrower but would instead be considered a loan beneficiary, and suggested that only the loan obligor be included in any accounting of the number of borrowers in that circumstance. Because the Final Rule does not use number of borrowers as the criterion, the Bureau need not address this suggestion.

[73] One commenter also asserted that the Proposed Rule appeared to mix two different concepts, as ''per-account'' is generally not the same as ''per-borrower.'' This commenter appears to have misunderstood the Bureau's proposal because the Proposed Rule, like the Final Rule the Bureau is now adopting, does not equate account with borrower.

[74] The Bureau reached this estimate as follows: For Federally-owned loans (including Federal Direct loans and Federally-owned FFELP loans), each borrower corresponds to exactly one account (that is one stream of fees), because the Department of Education compensates servicers based on their number of borrowers, rather than on the number of loans they service. *See* Title IV Redacted Contract Awards, Attachment A–6—Servicing Pricing Definitions, *available at https://www.fbo.gov/spg/ED/FSA/CA/FSA-TitleIV-09/listing.html.* According to SLSA's data, the seven largest firms have reported that they service 30 million borrowers of Federally-owned loans. Among outstanding student loans that are not Federally-owned (commercially-held FFELP loans and all private student loans), the Bureau believes that the number of accounts is unlikely to exceed the number of loans reported by the various servicers, as the Bureau is unaware of any fee stream that corresponds to a unit smaller than a single loan. The seven largest firms reported to SLSA that they service 45 million non-Federally-owned loans. (The Bureau recognizes that because SLSA has not established standards, servicers have adopted different methods for counting private loans and their borrowers, but the Bureau does not expect the variations to be substantial for purposes of this estimate.) Thus, the Bureau believes an upper-bound estimate of the number of accounts serviced by the seven largest market participants is 75 million—the sum of the number of accounts corresponding to 30 million borrowers of Federally-owned student loans (at one account per borrower) and the number of accounts corresponding to 45 million loans that are not Federally-owned (at one account per loan). The seven largest firms report that they are servicing the loans of a total of 49 million borrowers. Therefore, the Bureau's upper-bound estimate for the number of accounts serviced by these seven firms, 75 million, is roughly 50 percent greater than the aggregate number of borrowers reported by these seven firms, 49 million. Using a similar means of estimating, the Bureau has calculated that an upper-bound estimate of the number of accounts serviced market-wide is about 50 percent more than the estimated number of borrowers in the market.

one million borrowers.[75] Those seven nonbanks, which will presumably be larger participants under the Final Rule, are responsible for between approximately 71 and 93 percent of activity in the nonbank student loan servicing market.[76] The next largest market participants report servicing the loans of approximately 300,000 borrowers each and are unlikely to reach the one million threshold on the basis of account volume.[77]

Although guaranty agencies engage in student loan servicing when they provide default aversion services in the manner provided by regulation,[78] the Bureau does not believe that the inclusion of this default aversion activity in the definition of ''student loan servicing'' changes the number of entities that currently meet the definition of larger participants under the Final Rule. A guaranty agency is compensated for performing default aversion by receiving a fee of one percent of the total unpaid principal and accrued interest owed by the borrower as of the date an institution asked the agency to engage in default aversion.[79] In light of the net default aversion income reported by each guaranty agency to the Department of Education and available data about FFELP balances, the Bureau does not believe that any guaranty agency performs this function for more than one million accounts.[80]

The Bureau believes that the account volume threshold of one million is consistent with the objective of supervising market participants that represent a substantial portion of the student loan servicing market and have a significant impact on consumers. The seven student loan servicers that the Bureau believes will likely be larger participants collectively service the loans of approximately 49 million borrowers.[81] At the same time, this threshold will subject to the Bureau's supervisory authority only entities that can reasonably be considered larger participants of the market.

One industry commenter urged the Bureau to increase the threshold to three million accounts. This would likely allow the Bureau to supervise only the five very largest participants in the market, which are the five Title IV Additional Servicers (TIVAS). The TIVAS represent between approximately 67 and 87 percent of activity in this market based on unpaid principal balance and number of borrowers.[82] In support of this change, the commenter noted that the TIVAS have a much higher volume than the next largest entities in the market. Other commenters including consumer groups opposed this change, noting that it would fail to include in the Bureau's supervisory program two very large loan servicers responsible for billions of dollars in education loans and would leave only five student loan servicers subject to the Bureau's supervision under the larger participant rule.

The Bureau agrees that even if these two entities are smaller than the TIVAS, they should nevertheless be considered ''larger participants'' of the market at present. Servicers with responsibility for over one million accounts have a substantial impact on consumers and the market. In fact, each of the two servicers that might be removed from the definition of ''larger participant'' if the threshold were increased from 1 million to 3 million accounts currently services approximately 1.5 million borrowers.[83] Additionally, these two servicers are responsible for the direct servicing of a large number of loans assigned to various smaller State-affiliated agencies or not-for-profits by the Health Care and Education Reconciliation Act of 2010.[84] In light of these relationships, the Bureau believes that supervising servicers that handle between one and three million accounts is an efficient way to monitor the servicing of loans assigned by statute to smaller servicers. The Bureau therefore declines to raise the threshold.[85]

Several consumer groups suggested lowering the threshold to 200,000 accounts. One of these commenters stated that a lower threshold would give the Bureau more flexibility because it would allow the Bureau to supervise between 15 and 18 entities, representing between approximately 74 and 99 percent of activity in this market.[86] Some asserted that a servicer with 200,000 accounts would need a similar large-scale investment in technology, internal controls, and human resources as a servicer with one million accounts; given that level of investment, the commenters said, supervision would not be burdensome. Consumer groups also stated that a lower threshold would increase the Bureau's ability to examine niche servicers that specialize in servicing important subsectors of borrowers.

The Bureau notes that the additional entities that would be included using

[75] By contrast, the median number of borrowers with loans being serviced by a given entity is approximately 250,000. 2012 SLSA Servicing Volume Survey, augmented by CFPB estimates.

[76] 2012 SLSA Servicing Volume Survey, augmented by CFPB estimates. This estimated range is slightly different from the Bureau's estimate when it issued the Proposed Rule because the Bureau has now factored in guaranty agencies that provide default aversion services, as noted above.

[77] As discussed above, the Bureau expects the number of accounts at a given servicer to be less than 50 percent larger than the number of borrowers. A firm with 300,000 borrowers is therefore unlikely to have more than 450,000 accounts. However, the Bureau's estimates do not take account of any servicers that do not report data to SLSA. These estimates also do not reflect any affiliations that may exist among market participants. If two student loan servicers that appear to be below the threshold given their reports to SLSA are actually affiliated companies, their aggregated account volume might render them both larger participants.

[78] 34 CFR 682.404.

[79] 34 CFR 682.404(k). This fee cannot be paid more than once on any loan. *Id.*

[80] In 2011, 33 guaranty agencies reported a total of $111 million in net default aversion fee revenue, which, given the one percent fee, corresponds to $11.1 billion in outstanding principal and interest of FFELP loans. Fed. Student Aid, FY 2011 Summary of Guaranty Agency Financial Reports, *available at http://www.fp.ed.gov/attachments/publications/EDForms2000DataFY11AnnualReport.pdf* (providing the total default aversion fees collected by guaranty agencies in FY 2011). The Bureau has estimated the average FFELP balance at $20,600 per borrower based on the total outstanding balance and number of borrowers reported by Federal Student Aid in the repayment, deferment, forbearance, and other categories as of September 30, 2012. Fed. Student Aid, Direct Loan Portfolio by Loan Status, *available at http://studentaid.ed.gov/sites/default/files/fsawg/datacenter/library/PortfoliobyLoanStatus.xls.* Using this data, the Bureau has estimated that the 33 guaranty agencies together provided default aversion services on the loans of less than one million borrowers. Because the highest net default aversion fee revenue reported by a single guaranty agency to the Department of Education was $33,725,085, the Bureau concludes based on the same analysis that no individual guaranty agency currently has even close to one million fee streams from default aversion services on its own.

[81] 2012 SLSA Servicing Volume Survey, augmented by CFPB estimates.

[82] 2012 SLSA Servicing Volume Survey, augmented by CFPB estimates.

[83] 2012 SLSA Servicing Volume Survey, augmented by CFPB estimates.

[84] 20 U.S.C. 1087f(a)(4); HCERA/SAFRA—Not-For-Profit (NFP) Servicer Program documentation, as of Sept. 25, 2013 (showing firms that contract servicing rights to other entities), *available at https://www.fbo.gov/spg/ED/FSA/CA/NFP-RFP-2010/listing.html.*

[85] The trade association advocating a higher threshold also suggested that only the TIVAS should be treated as larger participants because the TIVAS are now receiving all new account allocations under the Federal Direct Loan Program. The Bureau recognizes that account allocations may implicate which entities have sufficient volume to meet the larger participant threshold of one million accounts in the future, but does not view this as a reason to adjust the threshold. In any event, entities that are not TIVAS may well obtain additional volume through other sources, such as subservicing contracts.

[86] 2012 SLSA Servicing Volume Survey, augmented by CFPB estimates. Three entities reported servicing the loans of between 133,000 and 200,000 borrowers. Although these entities would be below a threshold of 200,000 borrowers, they might qualify as larger participants using a threshold of 200,000 accounts. As discussed above, the Bureau expects a firm's number of accounts generally to be no less than its number of borrowers and no more than about 50 percent greater.

this lower threshold are only a fraction of the size of even the smallest entities that exceed the one million account threshold.[87] Additionally, many of the entities that would be captured between 200,000 and one million accounts are State-affiliated agencies or not-for-profit entities that place their loans with two servicers that will likely be larger participants.[88] Because these two servicers are above the one million account threshold, the Bureau should be able to evaluate these common servicing platforms and identify risks they pose to consumers. To the extent these smaller entities raise additional concerns, the Bureau has other tools that it could use to address them, including (1) establishing supervision authority over a particular company based on a reasonable-cause determination pursuant to the Bureau's risk determination rule, 12 CFR part 1091, pursuant to 12 U.S.C. 5514(a)(1)(C); (2) enforcement investigations where warranted; (3) coordination with State regulators, State attorneys general, and the Federal Trade Commission; and (4) research and monitoring. In light of the availability of these alternative tools, the Bureau declines to lower the threshold for larger-participant status.[89]

One commenter noted that the one million account threshold would not cover any servicers with annual receipts below $30 million and suggested the threshold should be lowered to align with the size standard for ''small businesses'' in this market established by the U.S. Small Business Administration (SBA). At the time the comment was filed, the threshold was $7 million in annual receipts for entities that fall in the NAICS code for ''other activities related to credit intermediation,'' the category that includes ''loan servicing.'' After the comment period closed, the SBA raised its size standard for this NAICS code to $19 million, effective July 22, 2013.[90] The SBA also increased the size standard for a related category—''consumer lending'' (which includes ''student lending'')—to $35.5 million.[91] In setting its size standards, the SBA considers a variety of factors—such as eligibility for Federal small-business assistance and Federal contracting programs; startup costs, entry barriers, and industry competition; and technological change.[92] These factors differ from the concerns articulated in this preamble that motivate the Bureau's definition of ''larger participants'' in a particular market such as student loan servicing. Because the SBA's measure and the Bureau's threshold are used for different purposes and targeted at different statutory objectives, the Bureau does not believe it is necessary as a general matter to adjust its threshold for a given market to conform to a particular SBA threshold.

The same commenter also suggested that a lower threshold than what the Bureau proposed is in order for this market because the threshold for larger participant status under the Consumer Reporting Rule is only $7 million in annual receipts. As stated in the Proposed Rule, the Bureau considers each market separately and may adopt different criteria and thresholds for each market. The Bureau selected annual receipts in the consumer reporting context for ease of application and made it clear that it had not determined that annual receipts, or a threshold of $7 million in annual receipts, would be appropriate for any other market that might be the subject of a future larger participant rulemaking.[93] This tailored approach is necessary because the markets that the Bureau has considered to date (consumer reporting, consumer debt collection, and student loan servicing) differ in many ways: Firms in the three markets perform entirely different functions and interact with consumers in different ways, the market structures are different, the substantive Federal consumer financial laws principally relevant to the three markets differ substantially, and the manner in which annual receipts connect to consumer interactions is different in each of the markets. In light of these and other significant differences, the Bureau continues to believe that the criterion and threshold used in the Final Rule would fit the student loan servicing market better than would the criteria and threshold used in the Consumer Reporting Rule.

A number of individual commenters suggested that the Bureau supervise all student loan servicers or particular subcategories regardless of size, such as all Federal student loan servicers. Some of these commenters asserted that small servicers are as likely to engage in fraudulent practices as larger servicers are. The Bureau does not believe that including a category of servicers regardless of size would be consistent with 12 U.S.C. 5514(a)(1)(B), which authorizes the Bureau to define ''larger participants'' of other markets for consumer financial products or services.[94] The Bureau therefore declines to make the changes suggested by these comments.[95]

Finally, one commenter urged the Bureau to read ''larger participant'' more broadly in light of the consumer protection purposes of the Dodd-Frank Act. In assessing whether an entity is a ''larger participant,'' this commenter suggested that the Bureau consider whether the entity mainly focuses on student loan servicing rather than assessing the volume of its accounts.

[87] 2012 SLSA Servicing Volume Survey, augmented by CFPB estimates.

[88] 2012 SLSA Servicing Volume Survey, augmented by CFPB estimates; HCERA/SAFRA—Not-For-Profit (NFP) Servicer Program documentation, as of Sept. 25, 2013 (showing firms that contract servicing rights to other entities), *available at https://www.fbo.gov/spg/ED/FSA/CA/NFP-RFP-2010/listing.html.*

[89] Two consumer groups suggested that the Final Rule should automatically cover servicers that the Department of Education is required by statute to contract with for loan servicing. The Health Care and Education Reconciliation Act of 2010 directed the Secretary of Education to allocate up to 100,000 servicing accounts to each eligible not-for-profit student loan servicer in existence as of July 1, 2009, subject to certain limitations. 20 U.S.C. 1087f(a)(4). A consumer group commenter stated that when Congress mandates that a servicing contract be given to a student loan servicer, that servicer should be subject to Bureau oversight to manage taxpayer money. As noted above, the Bureau believes that many of these entities currently have total account volumes that fall between 200,000 and 1 million. For the same reasons that the Bureau has chosen not to lower the threshold to 200,000 accounts, the Bureau has decided not to adjust the Proposed Rule's definitions in a way that would render these not-for-profit entities larger participants of the student loan servicing market.

[90] 78 FR 37409, 37412 (June 20, 2013); 13 CFR 121.201 (NAICS code 522390). For the purposes of its analysis under 12 U.S.C. 5512(b)(2)(A), the Bureau assumes that participants in the student loan servicing market will be classified in NAICS code 522390, ''other activities related to credit intermediation.'' NAICS lists ''loan servicing'' as an index entry corresponding to this code. *See* Census Bureau, 2012 NAICS Definition, 522390 Other Activities Related to Credit Intermediation, *available at http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=522390&search=2012 NAICS Search.* The Bureau solicited comment on whether this or any other NAICS code is most appropriate for this market and did not receive any comments. The Bureau is aware that a nonbank larger participant of the student loan servicing market might identify itself as falling within a NAICS code other than the one that includes loan servicing. For example, some entities may report under NAICS code 522291 for consumer lending, which is the index entry corresponding to student lending.

[91] *See* 78 FR 37409, 37412 (June 20, 2013); 13 CFR 121.201 (NAICS code 522291).

[92] 13 CFR 121.102(a); Size Standards Div. Office of Gov't Contracting & Bus. Dev., ''SBA Size Standards Methodology'' (Apr. 2009), *available at http://www.sba.gov/sites/default/files/size_standards_methodology.pdf.*

[93] 77 FR 42874, 42876, 42890 (July 20, 2012) (Consumer Reporting Rule). The ''annual receipts'' criteria used in the Consumer Reporting Rule and the Consumer Debt Collection Rule also differ in some respects from the SBA's definition of ''annual receipts.'' For example, the SBA counts all of a person's receipts in calculating annual receipts, while the Consumer Reporting and Consumer Debt Collection Rules count only receipts resulting from a market-related activity. *Id.*

[94] 12 U.S.C. 5514(a)(1)(B), (a)(2).

[95] As noted above, nonbank covered persons generally are subject to the Bureau's regulatory and enforcement authority, and any applicable Federal consumer financial law, regardless of whether they are subject to the Bureau's supervisory authority.

Under such an approach, a monoline company engaging in a certain volume of student loan servicing might be a larger participant even though a multiline company engaging in substantially more student loan servicing would not be a larger participant. The Bureau has decided not to adopt this approach because the Bureau does not believe that a company's status as a larger participant of the student loan servicing market should change based on the relative magnitude of *other* lines of business in which it may engage. For the reasons stated above, the Bureau adopts the proposed threshold of one million accounts for the student loan servicing market.

VI. Section 1022(b)(2)(A) of the Dodd-Frank Act [96]

A. Overview

The Bureau has considered potential benefits, costs, and impacts of the Final Rule.[97] The Proposed Rule set forth a preliminary analysis of these effects, and the Bureau requested and received comments on the topic. In addition, the Bureau has consulted with or offered to consult with the Department of Education, the Federal Trade Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration, regarding, among other things, consistency with any prudential, market, or systemic objectives administered by such agencies.

The Final Rule defines a category of ''larger participant[s] of . . . market[s] for other consumer financial products or services'' that would be subject to the Bureau's nonbank supervision program pursuant to 12 U.S.C. 5514(a)(1)(B). The category includes ''larger participants'' of a market for ''student loan servicing'' that the Final Rule describes. Whether a firm is a larger participant in this market is measured on the basis of account volume. If a nonbank covered person's account volume (measured, per the definition, as of December 31 in the preceding calendar year) exceeds one million, then it is a larger participant. If a firm is deemed to be a larger participant in a given year, then it will remain a larger participant for at least the subsequent year as well, regardless of its account volume in that year.

B. Potential Benefits and Costs to Consumers and Covered Persons

This analysis considers the benefits, costs, and impacts of the key provisions of the Final Rule measured from a baseline that includes the Bureau's existing rules defining larger participants of certain markets.[98] At present, there is no Federal program for supervision of nonbank student loan servicers of private student loans with respect to Federal consumer financial law. With respect to Federal student loans, there is no Federal program for supervision of nonbank student loan servicers with respect to Federal consumer financial law, but servicing of Federal student loans must be conducted in accordance with the Department of Education's performance standards.[99] With the Final Rule in effect, the Bureau will be able to supervise larger participants of the defined student loan servicing market.

The Bureau notes at the outset that limited data are available with which to quantify the potential benefits, costs, and impacts of the Final Rule. For example, although the Bureau has general quantitative information, as discussed above, on the number of market participants and their numbers of borrowers and loans and volumes of unpaid principal balances, the Bureau lacks detailed information about their rates of compliance or noncompliance with Federal consumer financial law and about the range of, and costs of, compliance mechanisms used by market participants.

In light of these data limitations, this analysis generally provides a qualitative discussion of the benefits, costs, and impacts of the Final Rule. General economic principles, together with the limited data that are available, provide insight into these benefits, costs, and impacts. Where possible, the Bureau has made quantitative estimates based on these principles and data as well as on its experience of undertaking supervision.

The discussion below describes three categories of potential benefits and costs. First, the Final Rule authorizes the Bureau's supervision in the student loan servicing market. Larger participants of the market may respond to the possibility of supervision by changing their systems and conduct, and those changes may result in costs, benefits, or other impacts. Second, when the Bureau undertakes supervisory activity at specific student loan servicers, those servicers will incur costs from responding to supervisory activity, and the results of these individual supervisory activities also may produce benefits and costs.[100] Third, the Bureau analyzes the costs that may be associated with entities' efforts to assess whether they qualify as larger participants under the rule.

In considering the costs and benefits of the Final Rule, it is important to note that Federal student loans and private student loans differ in various ways, including repayment options, terms, and conditions; the treatment of delinquent accounts; and servicing standards, which for Federal loans are imposed by the Department of Education. Federal student loans are also much more prevalent than private student loans: Of the 39 percent of undergraduates who obtained education loans in the 2007–2008 academic year, 90 percent obtained Federal loans and only 39 percent obtained private student loans.[101]

1. Benefits and Costs of Responses to the Possibility of Supervision

The Final Rule will subject larger participants of the student loan servicing market to the possibility of Bureau supervision. That the Bureau will be authorized to undertake supervisory activities with respect to a nonbank covered person that qualifies as a larger participant does not necessarily mean the Bureau will in fact undertake such activities regarding that

[96] 12 U.S.C. 5512(b)(2)(A).

[97] Specifically, 12 U.S.C. 5512(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in 12 U.S.C. 5516, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with objectives those agencies administer. The manner and extent to which the provisions of 12 U.S.C. 5512(b)(2) apply to a rulemaking of this kind that does not establish standards of conduct are unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the analysis and consultations described in those provisions of the Dodd-Frank Act.

[98] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline. The Bureau, as a matter of discretion, has chosen to describe a broader range of potential effects to more fully inform the rulemaking.

[99] Dep't of Educ., Federal Student Aid Annual Report 2 (2012), *available at http://www2.ed.gov/about/reports/annual/2012report/fsa-report.pdf.*

[100] Pursuant to 12 U.S.C. 5514(e), the Bureau also has supervisory authority over service providers to nonbank covered persons encompassed by 12 U.S.C. 5514(a)(1), which includes larger participants. The Bureau does not have data on the number or characteristics of service providers to the roughly seven larger participants of the student loan servicing market. The discussion herein of potential costs, benefits, and impacts that may result from the Final Rule generally applies to service providers to larger participants.

[101] National Postsecondary Student Aid Study 2008 (hereinafter NPSAS 2008).

covered person in the near future. Rather, supervision of any particular larger participant as a result of this rulemaking is probabilistic in nature. For example, the Bureau will examine certain larger participants on a periodic or occasional basis. The Bureau's decisions about supervision will be informed, as applicable, by the factors set forth in 12 U.S.C. 5514(b)(2) relating to the size and transaction volume of individual participants, the risks their consumer financial products and services pose to consumers, the extent of State consumer protection oversight, and other factors the Bureau may determine are relevant. Each entity that believes it qualifies as a larger participant will know that it may be supervised and may gauge, given its circumstances, the likelihood that the Bureau will initiate an examination or other supervisory activity.

The prospect of potential supervisory activity may create an incentive for larger participants to increase their compliance with Federal consumer financial law. They may anticipate that by doing so (and thereby decreasing risks to consumers), they can decrease the likelihood of their actually being subjected to supervision as the Bureau evaluates the factors outlined above. In addition, an actual examination will likely reveal any past or present noncompliance, which the Bureau can seek to correct through supervisory activity or, in some cases, enforcement action. Larger participants may therefore judge that the prospect of supervision increases the potential consequences of noncompliance with Federal consumer financial law, and they may seek to decrease that risk by curing or mitigating any noncompliance.

The Bureau believes it is likely that market participants will increase compliance in response to the Bureau's supervisory activities authorized by the Final Rule. However, because the Final Rule itself does not require any student loan servicer to alter its performance of student loan servicing, any estimate of the amount of increased compliance would be both an estimate of current compliance levels and a prediction of market participants' behavior. The data the Bureau currently has do not support a specific quantitative estimate or prediction. But, to the extent that student loan servicers increase their compliance in response to the Final Rule, that response will result in both benefits and costs.[102]

The Bureau notes that the existing levels of compliance with Federal consumer financial law may be different for the servicing of Federal and private student loans. The Department of Education's Office of Federal Student Aid (FSA) sets performance standards and oversees the operations of Federal student loan servicers.[103] FSA standards for systems, controls, and legal compliance may have the collateral consequence that entities comply more faithfully with some aspects of Federal consumer financial law with respect to their servicing of Federal student loans. To that extent, any increase in compliance that results from the Final Rule may be smaller for Federal than for private student loan servicing. Both the benefits and the costs of increased compliance might thus be smaller for Federal student loan servicing.

a. Benefits From Increased Compliance

Increased compliance will be beneficial to consumers that are affected by student loan servicing. As discussed above, the potential pool of consumers who are directly affected by student loan servicing is broad: In the 2007–2008 academic year, 39 percent of undergraduates and 43 percent of graduate students obtained new student loans.[104] Increasing the rate of compliance with such laws will benefit consumers and the consumer financial market by providing more of the protections mandated by those laws. The roughly seven larger participants of the student loan servicing market that will likely, at the outset, qualify as larger participants under the Final Rule's threshold currently service the student loans of approximately 49 million borrowers.[105] A number of Federal consumer financial laws, including the Electronic Fund Transfer Act (EFTA) and its implementing regulation, Regulation E; the Fair Credit Reporting Act (FCRA) and its implementing regulation, Regulation V; the Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B; and Title X of the Dodd-Frank Act offer substantive protections to consumers regarding student loan servicing.[106] Increasing the rate of compliance with such laws will benefit consumers by providing more of the protections mandated by those laws.[107]

For instance, many student loan servicers receive loan payments through preauthorized electronic fund transfers. Among other things, EFTA establishes certain guidelines for ensuring that fund transfers are not sent without consumers' consent.[108] Increased compliance with EFTA might include a higher degree of fidelity to EFTA's consent process and could thereby decrease the risk that borrowers will suffer unauthorized transfers of their funds. Unauthorized transfers could adversely affect consumers by modifying the amount and timing of payments. Even if the amount of payments per period is anticipated, the timing of payments could constrain consumers in the very short run. For example, a consumer might plan to make a student loan payment in one pay period and a car payment in the next pay period, but may have insufficient funds both to make payments in the same pay period and to meet his other financial obligations without incurring additional charges such as overdraft fees. Furthermore, the timing of anticipated payments may affect overall consumption for certain groups of consumers.[109]

[102] Another approach to considering the benefits, costs, and impacts of the Final Rule would be to focus almost entirely on the supervision-related costs for larger participants and omit a broader consideration of the benefits and costs of increased compliance. As noted above, the Bureau has, as a matter of discretion, chosen to describe a broader range of potential effects to more fully inform the rulemaking.

[103] Dep't of Educ., Federal Student Aid Annual Report 2 (2012), *available at http://www2.ed.gov/about/reports/annual/2012report/fsa-report.pdf.*

[104] NPSAS 2008.

[105] *See* 2012 SLSA Servicing Volume Survey, augmented by CFPB estimates. If a servicer were handling loans to an individual consumer for more than one holder, the servicer might count that consumer as more than one borrower. Nonetheless, 49 million borrowers corresponds to a comparably large number of consumers with whom the anticipated larger participants interact.

[106] 15 U.S.C. 1693 *et seq.* (EFTA); 12 CFR part 1005 (Regulation E); 15 U.S.C. 1681 *et seq.* (FCRA); 12 CFR part 1022 (Regulation V); 15 U.S.C. 1691 *et seq.* (ECOA); 12 CFR part 1002 (Regulation B); 12 U.S.C. 5301 *et seq.* (Dodd-Frank Act).

[107] Among other things, EFTA is intended to establish basic consumer rights with regard to the use of electronic systems to transfer funds. 15 U.S.C. 1693. FCRA was enacted to improve credit report accuracy and protect consumer privacy. *See Safeco Ins. Co. of Am. v. Burr,* 551 U.S. 47, 52 (2007) (''Congress enacted the FCRA in 1970 to ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy.''). ECOA makes it unlawful for creditors to discriminate against applicants, with respect to any aspect of a credit transaction, on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract), the receipt of public assistance income, or the applicants' exercise of certain rights under Federal consumer financial protection laws. 15 U.S.C. 1691(a).

[108] 15 U.S.C. 1693e.

[109] Recent work by Mastrobuoni and Weinberg and by Shapiro and Slemrod demonstrated that the timing of payments to consumers can affect their consumption. Mastrobuoni, Giovanni and Weinberg, Matthew, 2009. ''Heterogeneity in Intra-Monthly Consumption Payments, Self-Control, and Savings at Retirement,'' *American Economic Journal: Economic Policy,* American Economic Association, vol. 1(2), pp. 163–89; Shapiro, Matthew and Slemrod, Joel, 1995. ''Consumer Response to the Timing of Income: Evidence from

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As another example, many student loan servicers furnish information to consumer reporting agencies about borrowers' payment histories. Such servicers therefore have certain obligations under FCRA and Regulation V. FCRA prohibits the furnishing of information to a consumer reporting agency that the furnisher knows or has reasonable cause to believe is inaccurate.[110] A servicer that furnishes information to consumer reporting agencies must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information furnished, considering applicable Federal guidelines, and must periodically review the policies and procedures and update them as necessary to ensure their continued effectiveness.[111] FCRA and Regulation V also give consumers the ability to dispute information furnished to consumer reporting agencies by submitting disputes to the consumer reporting agencies or directly to furnishers.[112] A student loan servicer receiving a dispute must generally conduct a reasonable investigation.[113] Increased compliance with these FCRA requirements will increase the accuracy of information that is furnished to consumer reporting agencies and thus of the information that is included in consumer reports. Given that student debt is a substantial proportion of total consumer debt in the United States, increasing the accuracy of reporting in this segment of the debt market could have a substantial positive effect on consumer report accuracy.[114] Because consumer reports are often critical in decisions regarding consumer financial products and services, more accurate information could lead to better economic decisions that would benefit both markets and consumers.[115]

More broadly, the Bureau will be examining whether larger participants of the student loan servicing market engage in unfair, deceptive, or abusive acts or practices (UDAAPs).[116] Conduct that does not violate an express prohibition of another Federal consumer financial law may nonetheless constitute a UDAAP.[117] Among the areas that the Bureau will examine with, in part, a view to preventing UDAAPs are repayment status processing, loan servicing transfers, general payment processing, application of prepayments and partial payments, and default aversion. To the degree that any servicer is currently engaged in any UDAAP in these areas, the cessation of the unlawful act or practice would benefit consumers.[118] All of the previously listed areas could be reviewed during an examination and, therefore, student loan servicers might improve policies and procedures relating to these areas in order to avoid engaging in UDAAPs.

b. Costs of Increased Compliance

On the other hand, increasing compliance involves costs. In the first instance, those costs will be paid by the market participants that choose to increase compliance. Student loan servicers might need to hire or train additional personnel to effectuate any changes in their practices that would be necessary to produce the increased compliance. They might need to invest in systems changes to carry out their revised procedures. In addition, student loan servicers might need to develop or enhance compliance management systems, to ensure that they are aware of any gaps in their compliance. Such changes will also require investment and might entail increased operating costs.

An entity that incurred costs in support of increasing compliance might try to recoup those costs by attempting to increase servicing revenues.[119] Whether and to what extent such an increase occurred will depend on competitive conditions in the student loan servicing market. For example, larger participants of the student loan servicing market may be in competition with depository institutions or credit unions (or affiliates thereof) that are already subject to Federal supervision with respect to Federal consumer financial law. Assuming as a baseline Bureau supervision of depository institutions and credit unions with over $10 billion in assets (and their affiliates) and prudential regulator supervision with respect to these areas of other depository institutions and credit unions,[120] to the extent the Final Rule results in an increase in the costs faced by the roughly seven larger participants, that increase will be a competitive benefit to those other covered persons. And competition from those other covered persons might reduce the ability of the roughly seven larger participants to pass an increase in their costs through as an increase in the price of servicing.

Any increase that did occur could constitute a cost of the rule borne in part by originators and holders of student loans. Originators or holders might respond to such a cost by choosing to bear the higher servicing costs, by exiting the student loan market, or by

a Change in Tax Withholding,'' *American Economic Review,* American Economic Association, vol. 85(1), pp. 274–83. Consumers can also be expected to adjust their consumption in response to the timing of anticipated account debits such as automatic-debit student loan payments.

[110] 15 U.S.C. 1681s–2(a)(1)(A).

[111] 12 CFR 1022.42.

[112] 15 U.S.C. 1681i(a)(1), 1681s–2(a)(8); 12 CFR 1022.43.

[113] 15 U.S.C. 1681i (indirect); 12 CFR 1022.43 (direct). In 2011 approximately eight million consumer contacts with the three largest consumer reporting agencies resulted in approximately 32 to 38 million disputed items on consumers' credit files. CFPB, Key Dimensions and Processes in the U.S. Credit Reporting System 4 (2012), *available at http://www.consumerfinance.gov/reports/key-dimensions-and-processes-in-the-u-s-credit-reporting-system/.*

[114] As discussed above, the Bureau estimates that outstanding student loan debt was approximately $1.1 trillion at the end of 2012. This figure represents ten percent of total U.S. consumer debt at the end of the fourth quarter of 2012. *See* Fed. Reserve Bank of N.Y., Quarterly Report on Household Debt and Credit 3 (Feb. 2013), *available at http://www.newyorkfed.org/research/national_economy/householdcredit/DistrictReport_Q42012.pdf* (finding that total U.S. consumer debt was $11.31 trillion at the end of the fourth quarter of 2012).

[115] Inaccurate information, for example, could lead to a consumer's being denied a loan that the consumer could afford to and would be likely to repay. Several studies have identified the problems that inaccurate consumer reporting creates in credit markets. *See, e.g.,* Avery, Robert B., et al., *Credit Report Accuracy and Access to Credit,* 2004 Fed. Res. Bull. 297, 314–15 (estimating fraction of individuals for whom inaccuracies in credit reports might affect credit terms); *see also id.* at 301–02 (citing prior research). Inaccurate information could also lead to a consumer's being offered credit at an interest rate higher than would be available if the creditor knew the consumer's true credit history. Conversely, some inaccuracies, by exaggerating some consumers' credit worthiness, may enable such consumers to receive lower interest rates than they otherwise would but understate their risk of default. In all these cases, increasing the accuracy of consumer report information should improve the pricing and allocation of credit.

[116] 12 U.S.C. 5531.

[117] The CFPB Supervision and Examination Manual provides further guidance on how the UDAAP prohibition applies to supervised entities. That examination manual is available at *http://www.consumerfinance.gov/guidance/supervision/manual.*

[118] See CFPB Supervision and Examination Manual (Oct. 31, 2012), available at *http://www.consumerfinance.gov/guidance/supervision/manual/,* for a more extensive discussion on the areas in which the Bureau intends to examine. Examiners will be reviewing these business lines for UDAAPs and for any other noncompliance with Federal consumer financial law.

[119] The Bureau uses the terms ''revenues'' and ''receipts'' interchangeably in the discussion that follows. The term ''annual receipts,'' however, is used with specific meaning in the context of the SBA's size standards. How a participant receives its revenue depends on the participant's business model. Compensation for servicing Federal student loans is based on contracts with the Department of Education and assignments are dependent on a Department of Education Performance Score Card. *See* Title IV Redacted Contract Awards, *available at https://www.fbo.gov/spg/ED/FSA/CA/FSA-TitleIV-09/listing.html; see also* Dep't of Educ., 2012 FSA Conference Session 14, Federal Loan Servicer Panel Discussion 11 (Nov. 2012). For private student loans, servicing contracts are negotiated between loan holders or guarantors and master servicers, and between master servicers and subservicers.

[120] *See* 12 U.S.C. 5515; 12 U.S.C. 5516.

servicing their portfolios of student loans in-house.

Whether and to what extent such an increase might occur will depend on market conditions. With respect to private student loans, origination and servicing are subject to the negotiation of terms, conditions, and prices; the Bureau lacks detailed information with which to predict what portion of any cost of increased compliance would be borne by loan originators or holders, and what portion would be borne by consumers. For Federally-owned loans, the price of servicing is determined by contracts between servicers and the FSA or in the case of guaranty agencies by regulation.[121] Because the FSA, as a dominant purchaser of servicing, has great control over pricing, the Bureau expects that relatively little if any increase in the cost of servicing Federal student loans would be passed through as an increase in the price of servicing. With respect to consumers, Federal student loans ''were authorized as entitlement programs in order to meet student loan demand.'' [122] Eligibility criteria, interest rates, and loan limits for Federal student loans are determined by Federal law, including the periodic reauthorization of the Higher Education Act of 1965.[123] Therefore, while the price of servicing Federal student loans might change, depending on market conditions, the pricing for and access to Federal student loans would likely not change substantially as a consequence of increases in servicers' compliance with Federal consumer financial law.

2. Benefits and Costs of Individual Supervisory Activities

In addition to the responses of market participants anticipating supervision, the possible consequences of the Final Rule include the responses to and effects of individual examinations or other supervisory activity that the Bureau might conduct in the student loan servicing market.

a. Benefits of Supervisory Activities

Supervisory activity could provide several types of benefits. For example, as a result of supervisory activity, the Bureau and the entity might uncover deficiencies in an entity's policies and procedures. The Bureau's examination manual calls for the Bureau generally to prepare a report of each examination, to assess the strength of the entity's compliance mechanisms, and to assess the risks the entity poses to consumers, among other topics. The Bureau will share examination findings with the entity because one purpose of supervision is to inform the entity of problems detected by examiners. Thus, for example, an examination might find evidence of widespread noncompliance with Federal consumer financial law, or it might identify specific areas where an entity has inadvertently failed to comply. These examples are only illustrative of what kinds of information an examination might uncover.

Detecting and informing entities about such problems should be beneficial to consumers. When the Bureau notifies an entity about risks associated with an aspect of its activities, the entity is expected to adjust its practices to reduce those risks. That response may result in increased compliance with Federal consumer financial law, with benefits like those described above. Or it may avert a violation that would have occurred had Bureau supervision not detected the risk promptly. The Bureau also may inform entities about risks posed to consumers that fall short of violating the law. Action to reduce those risks would also be a benefit to consumers.

Given the obligations student loan servicers have under Federal consumer financial law and the existence of efforts to enforce such law, the results of supervision also may benefit student loan servicers under supervision by detecting compliance problems early. When an entity's noncompliance has resulted in litigation or an enforcement action, the entity must face both the costs of defending its actions and the penalties for noncompliance, including potential liability for statutory damages to private plaintiffs. The entity must also adjust its systems to ensure future compliance. Changing practices that have been in place for long periods of time can be expected to be relatively difficult because they may be severe enough to represent a serious failing of an entity's systems. Supervision may detect flaws at a point when correcting them would be relatively inexpensive. Catching problems early can, in some situations, forestall costly litigation. To the extent early correction limits the amount of consumer harm caused by a violation, it can help limit the cost of redress. In short, supervision might benefit student loan servicers under supervision by, in the aggregate, reducing the need for other more expensive activities to achieve compliance.[124]

b. Costs of Supervisory Activities

The potential costs of actual supervisory activities arise in two categories. The first involves the costs to individual student loan servicers of increasing compliance in response to the Bureau's findings during supervisory activity and to supervisory actions. These costs are similar in nature to the possible compliance costs, described above, that larger participants in general might incur in anticipation of possible supervisory activity. This analysis will not repeat that discussion. The second category is the cost of supporting supervisory activity.

Supervisory activity may involve requests for information or records, on-site or off-site examinations, or some combination of these activities. For example, in an on-site examination, generally, Bureau examiners begin by contacting an entity for an initial conference with management. That initial contact is often accompanied by a request for information or records. Based on the discussion with management and an initial review of the information received, examiners determine the scope of the on-site exam. While on-site, examiners spend some time in further conversation with management about the entity's policies, processes, and procedures. The examiners also review documents, records, and accounts to assess the entity's compliance and evaluate the entity's compliance management systems. As with the Bureau's other examinations, examinations of nonbank participants in the student loan servicing market may involve issuing confidential examination reports and compliance ratings. The Bureau's examination manual describes the supervision process and indicates what materials and information an entity can expect examiners to request and review,

[121] *See* 34 CFR 682.404(k) (setting the default aversion fee for guaranty agencies); Title IV Redacted Contract Awards, *available at https://www.fbo.gov/spg/ED/FSA/CA/FSA-TitleIV-09/listing.html.*

[122] Dep't of Educ., Student Loans Overview: Fiscal Year 2013 Budget Request, at R–28, *available at http://www2.ed.gov/about/overview/budget/budget13/justifications/r-loansoverview.pdf.*

[123] 20 U.S.C. 1070 *et seq.*

[124] Further potential benefits to consumers, covered persons, or both might arise from the Bureau's gathering of information during supervisory activities. The goals of supervision include informing the Bureau about activities of market participants and assessing risks to consumers and to markets for consumer financial products and services. The Bureau may use this information to improve regulation of consumer financial products and services and to improve enforcement of Federal consumer financial law, in order to better serve its mission of ensuring consumers' access to fair, transparent, and competitive markets for such products and services. Benefits of this type would depend on what the Bureau learns during supervision and how it uses that knowledge. For example, because the Bureau would examine multiple covered persons in the student loan servicing market, the Bureau would build an understanding of how effective compliance systems and processes function.

both before they arrive and during their time on-site.

The primary cost an entity will face in connection with an examination would be the cost of employees' time to collect and provide the necessary information. At this stage in its nonbank supervision program, the Bureau does not have precise estimates of the expected duration and frequency of its examinations and the resources that entities may expend to cooperate with such examinations. The frequency and duration of examinations of any particular entity will depend on a number of factors, including the size of the entity, the compliance or other risks identified, whether the entity has been examined previously, and the demands on the Bureau's supervisory resources imposed by other entities and markets. Nevertheless, some rough estimates may be useful to provide a sense of the magnitude of potential staff costs that entities might incur.

The Bureau has engaged in multiple mortgage servicing exams. Because both mortgage servicing and student loan servicing involve collecting and remitting payments on long-term loans, examinations of mortgage servicers should be a reasonable analogue for the examinations the Bureau will conduct under the Final Rule.[125] Therefore, the Bureau can estimate duration and labor intensity of examinations using information from mortgage servicing examinations that have already been completed. The average duration of the on-site portion of a Bureau examination of a mortgage servicer is ten weeks.[126] The Bureau estimates the cost of an examination to a student loan servicer by assuming that, similarly, Bureau examiners might review materials and interview employees for ten weeks.An entity could be expected to devote the equivalent of one full-time employee during that time and for two weeks beforehand to prepare materials for the examination. The typical cost of an employee involved in responding to supervision can be expected to be roughly $50 per hour.[127] Twelve weeks of such an employee's time would cost approximately $24,000.[128]

Three commenters contended that the Bureau underestimated the costs of supervision and stated that the Bureau should have used a different basis for its estimate. In particular, two of the commenters stated that the Bureau should have based its estimate of costs on, among other things, audits of servicers required by the Department of Education. In the commenters' view, this would have resulted in a substantially higher estimate. The Bureau believes the analogue it uses is a better analogue than those proposed by the commenters because it more accurately reflects the sort of examination to which student loan servicers will be subject. Bureau examinations, as detailed in the ''Overview'' section of the preamble to this rule, test for compliance with Federal consumer financial protection laws. Student loan servicing and mortgage loan servicing examinations will involve some of the same Federal consumer financial protection laws, and the general process and costs will be relatively similar.[129] On the other hand, audits required by the Federal loan holder, the Department of Education, or FFELP loan holders, include preparing and filing detailed financial statements regarding matters other than Federal consumer financial protection law.[130] The Bureau does not believe that the burden of accommodating an audit regarding matters other than compliance with Federal consumer financial protection law is more analogous to the costs imposed by this rule than examinations of similar entities for compliance with similar Federal consumer financial protection law. One commenter also urged the Bureau to recognize the cumulative burden of Federal reviews. However, the commenter did not identify any respect in which the existence of Department of Education audits would make Bureau supervision more burdensome.

One commenter stated that the Bureau's cost estimate should be increased because additional employee time will be required. That more than one employee might be involved in an examination does not, in itself, suggest the Bureau's estimate was inaccurate. In estimating that an examination might require a full-time compliance officer for 12 weeks and using the mean hourly wage for compliance officers, the Bureau did not mean to suggest that only one mid-level person would be involved in an examination. Instead, the Bureau recognizes that both junior and high-level staff may participate on a part-time basis and that these staff may be drawn from different offices within the entity. The Bureau intended its original estimate to represent the aggregate amount of labor resources a company might dedicate to responding to supervisory activity. The Bureau's estimate was based on the Bureau's experience in mortgage servicing examinations. As discussed above, the Bureau continues to believe these examinations are an appropriate analogue on which to base its estimate.

The commenter specifically suggested that the Bureau's cost estimate was too low because it did not sufficiently account for the cost of attorneys, which the commenter asserted will likely be involved in examinations. The Bureau has not suggested that counsel is required during an examination. However, to provide further information about potential costs of the rule, the Bureau has additionally estimated the cost of an examination using the assumption that the equivalent of two full-time compliance officers participated for 12 weeks, and a lawyer participated in the examination for

[125] Mortgage servicing examinations likely differ in detail from the supervisory activity the Bureau would undertake for student loan servicers. For example, mortgage servicers have certain obligations under the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.,* which does not apply to student loan servicing. As another example, mortgages are secured by real estate, and servicing activities can involve that security interest. The parts of the Bureau's examination manual that relate to mortgage servicing and education lending reflect the differences between these two markets. Nonetheless, for the majority of borrowers, the core activities of the two types of servicers are comparable. The Bureau therefore expects that its experience supervising mortgage servicers can provide a useful guide for estimating the costs of examinations of student loan servicers.

[126] This estimate was derived prior to issuance of the Proposed Rule using confidential supervisory Bureau data on the duration of on-site mortgage servicing examinations at both depository institutions and nonbanks. For purposes of this calculation, the Bureau counted its mortgage servicing examinations for which the on-site portion had been completed. Additionally, the Bureau counted only the on-site portion of an examination, which included time during the on-site period of the examination that examiners spent examining the entity while off-site for holiday or other travel considerations. However, the Bureau did not count time spent scoping an examination before the on-site portion of the examination or summarizing findings or preparing reports of examination afterwards.

[127] Bureau of Labor Statistics (BLS), Occupational Employment Statistics, *available at ftp://ftp.bls.gov/pub/special.requests/oes/oesm11all.zip.* BLS data for ''activities related to credit information'' (NAICS code 522300) indicate that the mean hourly wage of a compliance officer in that sector is $33.13. BLS data also indicate that salary and wages constitute 66.6 percent of the total cost of compensation. *See* BLS, Employer Costs for Employee Compensation Database, Series ID CMU2025220000000D, *available at http://data.bls.gov/timeseries/CMU2025220000000D?data_tool=XGtable* (providing wage and salary percent of total compensation in the credit intermediation and related activities private industry for Q4 2011). Dividing the hourly wage by 66.6 percent yields a total mean hourly cost (including total costs, such as salary, benefits, and taxes) rounded to the nearest dollar of $50 per hour.

[128] All figures assume 40 hours of work per week.

[129] *See, e.g.,* 12 U.S.C. 5531 (prohibiting unfair, deceptive, or abusive acts or practices).

[130] *See, e.g.,* Dep't of Educ., Office of Inspector Gen., Lender Servicer Financial Statement Audit and Compliance Attestation Guide, *available at http://www2.ed.gov/about/offices/list/oig/nonfed/lenderserviceraudtguidejanuary2011.pdf* (establishing audit standards for certain servicers of FFELP loans).

approximately 10 percent of the firm's overall activity during the course of the examination, roughly 100 hours.[131] Under these assumptions, the total labor costs would be approximately $59,000.

By comparison, the Bureau estimates that a student loan servicer with responsibility for one million accounts would receive at least $20.2 million per year in revenue from that activity.[132] Thus, the labor costs associated with an examination, as estimated above, would be no greater than 0.12 percent of the receipts of such a firm using the Bureau's original estimate or 0.29 percent using the alternative estimate that incorporates the equivalent of two full-time compliance officers and attorney involvement.[133] Note that $20.2 million is an estimated lower bound on the receipts of a larger participant as defined by the Final Rule. The costs associated with an examination are therefore likely to be a much smaller percentage of receipts each year for a given larger participant.

The overall costs of supervision in the student loan servicing market will depend on the frequency and extent of Bureau examinations. Neither the Dodd-Frank Act nor the Final Rule specifies a particular level or frequency of examinations.[134] The frequency of examinations will depend on a number of factors, including the Bureau's understanding of the conduct of market participants and the specific risks they pose to consumers; the responses of larger participants to prior examinations; and the demands that other markets make on the Bureau's supervisory resources. These factors can be expected to change over time, and the Bureau's understanding of these factors may change as it gathers more information about the market through its supervision and by other means. The Bureau therefore declines to predict, at this point, precisely how many examinations in the student loan servicing market it would undertake in a given year.[135]

3. Costs of Assessing Larger-Participant Status

Finally, the Bureau acknowledges that in some cases student loan servicers may incur costs in assessing whether they qualify as larger participants and potentially disputing their status.

Larger-participant status depends on the number of accounts for which a student loan servicer is performing servicing as of December 31 of the prior calendar year. This number should be readily extractible from administrative records because account volume is, in general, derived from the compensation a servicer receives. In addition, all but one large nonbank student loan servicer reported to SLSA their number of borrowers and number of loans as of December 31, 2011.[136] These two figures should be lower and upper bounds for a servicer's number of accounts. Student loan servicers that service Federal loans should at a minimum know their Federal loan volumes as of December 31 because the Department of Education keeps up-to-date records of Federal student loan servicers in the National Student Loan Data System.[137]

To the extent that some student loan servicers do not already know their account volumes, such servicers might, in response to the Final Rule, develop new systems to count their accounts in accordance with the proposed definition of ''account volume.'' The data the Bureau currently has do not support a detailed estimate of how many student loan servicers would engage in such development or how much they might spend. Regardless, student loan servicers would be unlikely to spend significantly more on specialized systems to count accounts than it would cost them to be supervised by the Bureau as larger participants. It bears emphasizing that even if expenditures on an accounting system successfully proved that a student loan servicer was not a larger participant, it would not necessarily follow that the student loan servicer could not be supervised. The Bureau can supervise a student loan servicer whose conduct the Bureau determines, pursuant to 12 U.S.C. 5514(a)(1)(C) and 12 CFR part 1091, poses risks to consumers. Thus, a student loan servicer choosing to spend significant amounts on an accounting system directed toward the larger-participant test could not be sure it would not be subject to Bureau supervision notwithstanding those expenses. The Bureau therefore believes it is unlikely that any but a very few student loan servicers would undertake such expenditures.

4. Consideration of Alternatives

The Bureau considered different thresholds for larger-participant status in the student loan servicing market. Figure 1 presents projections of the number of borrowers with loans being serviced by each servicer as of December 31, 2012.[138] Since the Bureau does not have specific data about the number of accounts, as defined in the Final Rule, in the discussion that follows the number of borrowers, as reported to SLSA, is treated as a proxy for the number of accounts at a given servicer.[139] These projections may underestimate the actual number of accounts for loans being serviced because they do not account for the possibility of growth in the servicing of private student loans or the possibility

[131] BLS, Occupational Employment Statistics, *available at ftp://ftp.bls.gov/pub/special.requests/oes/oesm11all.zip.* BLS data for ''activities related to credit information'' (NAICS code 522300) indicate that the mean hourly wage of a lawyer in that sector is $72.03. Because salary and wages constitute 66.6% of total compensation, the total mean hourly cost for a lawyer is $108 per hour.

[132] The Bureau estimates this figure based on the 2013 average unit cost for loan servicing on Federal loans of $1.68 per month per borrower for for-profit servicers of Federal loans, as reported by the Department of Education. *See* Student Aid Administration Fiscal Year 2013 Request, at AA–15, *available at http://www2.ed.gov/about/overview/budget/budget13/justifications/aa-saadmin.pdf.* The same source reports that not-for-profit servicers' average unit cost is $1.76 per month per borrower. The Bureau assumes, for the estimate, that servicing private student loans generates at least as much revenue per month per borrower as servicing Federal loans, and that a loan is serviced for 12 months per year. Note that since the number of accounts is generally no less than the number of borrowers, this approach may underestimate revenues.

[133] The percentage would be even lower if an entity received revenue from other sources.

[134] The Bureau declines to predict at this time precisely how many examinations it would undertake at each student loan servicer. But for purposes of the following analysis, the Bureau uses one examination every two years. If the Bureau examines each of the seven larger participants of the student loan servicing market once every two years, the expected annual labor cost of supervision per larger participant would be approximately $12,000 (the cost of one full-time compliance officer for twelve weeks, divided by two). This would account for at most 0.06 percent of the receipts of an entity responsible for one million accounts. To put this in perspective, the Bureau estimates that the seven larger participants handle at least 49 million accounts, resulting in at least $984 million in receipts. The expected annual labor cost of supervision, collectively, at these seven larger participants is estimated to be $82,000, which is 0.01 percent of their estimated total receipts. Even if the entity instead used the equivalent of two full-time compliance officers for twelve weeks and 100 hours of attorney time, the expected annual labor cost of supervision, collectively, at these seven larger participants would be an estimated $206,000, which is 0.02 percent of their estimated total receipts.

[135] One commenter recommended that the Bureau minimize the costs of supervision by coordinating with the Department of Education. In fact, in connection with its supervision of student loan servicers, pursuant to its statutory obligation, the Bureau will use, to the fullest extent possible, reports that have been provided to other Federal agencies and share information with the Department of Education regarding complaints. 12 U.S.C. 5514(b)(4); 5535(c).

[136] 2012 SLSA Servicing Volume Survey.

[137] Dep't of Educ., National Student Loan Data System (NSLDS) for Students (2013), *available at https://www.nslds.ed.gov.*

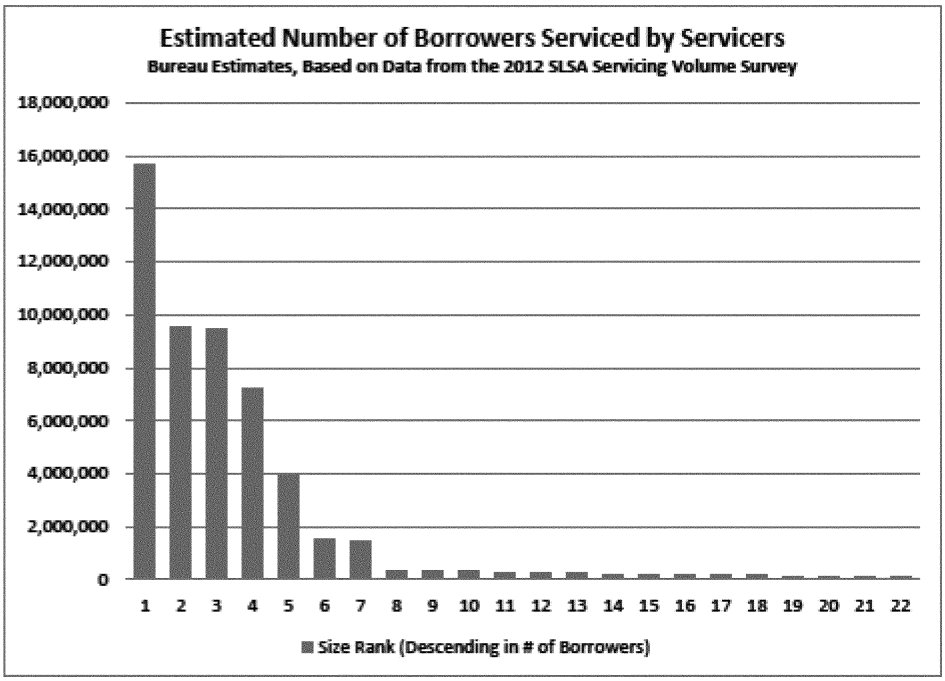
[138] *See* 2012 SLSA Servicing Volume Survey, augmented by CFPB estimates.

[139] For Federal Direct and Federally-owned FFELP loans, the concept of borrower and account are identical.

of multiple accounts for a given borrower at a servicer. Note that there is a relatively large decline in number of borrowers between the seventh largest servicer, which services the loans of approximately 1.5 million borrowers, and the next largest servicers, each of which services the loans of approximately 300,000 borrowers. This drop is attributable in part to FSA's mechanism for allocating servicing contracts to the TIVAS and to the not-for-profit servicers (NFPs): Each NFP is limited to servicing at most 100,000 Federal accounts at a time.[140]

One possible alternative the Bureau considered was a larger threshold of, for example, three million in account volume. Under such an alternative, the benefits of supervision to both consumers and covered persons would likely be substantially reduced because firms impacting a large number of consumers and/or consumers in important market segments would be omitted. On the other hand, the potential costs to nonbank covered persons would of course be reduced if fewer firms were defined as larger participants and thus fewer were subject to the Bureau's supervision authority on that basis.

Figure 1: Estimated Number of Borrowers Serviced by Servicers[141]



The Bureau also considered various other criteria for assessing larger-participant status, including number of loans and total unpaid principal balances. Calculating either of these metrics might be more involved than calculating total account volume for a given servicer. If so, then a given entity might face greater costs for evaluating or disputing whether it qualified as a larger participant. However, among the participants in the student loan servicing market these metrics correlate strongly with account volume. For each criterion, the Bureau expects that it could choose a suitable threshold for which the set of larger participants, among those entities participating in the market today, would be the same as the seven entities expected to qualify under the Final Rule. Consequently, the costs, benefits, and impacts of supervisory activities should not depend on which criterion the Bureau uses.

C. Potential Specific Impacts of the Final Rule

1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Dodd-Frank Act Section 1026

The Final Rule does not apply to depository institutions or credit unions of any size. However, it might, as discussed above, have some impact on depository institutions that hold private student loans or that service private student loans or FFELP loans. The Final Rule might therefore alter market dynamics in a market in which some depository institutions and credit unions with less than $10 billion in assets may be active. To the extent such institutions may have less market power than larger institutions, the change in market dynamics could affect them differently. Although this affects all student loan holders that contract for servicing, loan holders that are depository institutions or credit unions with less than $10 billion in assets may have less negotiating power with respect to the price of servicing than larger institutions, so they may face larger price increases. However, the Bureau notes that asset size alone is not necessarily a good predictor of each institution's susceptibility to any changes in the student loan servicing market that might result from the Final Rule. An individual institution that focused on educational lending might, on its own or together with its affiliates, play a role in the market for originating student loans or for contracting for servicing that was disproportionate to its assets as a share of the overall banking market. And an individual

[140] HCERA/SAFRA—Not-For-Profit (NFP) Servicer Program documentation, as of Sept. 25, 2013, *available at https://www.fbo.gov/spg/ED/FSA/CA/NFP-RFP-2010/listing.html.*

[141] 2012 SLSA Servicing Volume Survey, augmented by CFPB estimates.

institution might have contractual or other relationships with particular servicers that could insulate it from some of the potential impacts of the Final Rule or could make it especially vulnerable to those impacts.

2. Impact of the Provisions on Consumer Access to Credit and on Consumers in Rural Areas

If the costs of increased compliance increased the price of servicing, creditors might consider that increase in the underwriting and loan pricing process. Private student loan creditors might consider adjusting the terms and conditions of loans to pass some or all of the price increase through to consumers. In addition, creditors might be less willing to extend credit to marginal borrowers. Thus, it is possible that consumers' access to credit might decrease as a result of the Final Rule. As noted above, qualifying students are entitled to Federal Direct loans in amounts and on terms specified by statute.[142] An increase in the price of servicing Federal loans is therefore unlikely to reduce consumers' access to such loans.

Since the rule applies uniformly to the loans of a particular type of both rural and non-rural consumers, the rule should not have a unique impact on rural consumers. The Bureau is not aware of any evidence suggesting that rural consumers have been disproportionately harmed by student loan servicers' failure to comply with Federal consumer financial law. The Bureau requested comments that provide information related to how student loan servicing affects rural consumers but did not receive any.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[143] The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.[144]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) of any proposed rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.[145]

The undersigned certified that the Proposed Rule, if adopted, would not have a significant economic impact on a substantial number of small entities and that an initial regulatory flexibility analysis was therefore not required. The Final Student Loan Servicing Rule adopts the Proposed Rule, with some modifications that do not lead to a different conclusion. Therefore, a final regulatory flexibility analysis is not required.

The Final Rule defines a class of student loan servicers as larger participants of the student loan servicing market and thereby authorizes the Bureau to undertake supervisory activities with respect to those servicers. The rule adopts a threshold for larger-participant status of one million in account volume. As estimated above, a student loan servicer with one million accounts receives about $20.2 million in servicing revenue per year. By contrast, under the SBA's criterion at the time of the Proposed Rule, a servicer was generally a small business only if its annual receipts were below $7 million. Thus, larger participants of the proposed student loan servicing market would generally not have been small businesses for purposes of the analysis.[146] Using the SBA's updated criterion of $19 million would not have altered the conclusion because a servicer at the Bureau's threshold would have about $20.2 million in annual servicing revenue.[147] Indeed, using the estimate above that a servicer earns $1.68 per month per account, the Bureau believes that at present none of the larger participants under the Final Rule have annual receipts below $30 million.[148] Moreover, the rule does not itself impose any obligations or standards of conduct on businesses outside the category of larger participants.

For these reasons, the Final Rule will not have a significant impact on a substantial number of small entities.

Additionally, and in any event, the Bureau believes that the Final Rule will not result in a ''significant impact'' on any small entities that could be affected. As previously noted, when and how often the Bureau will in fact engage in supervisory activity, such as an examination, with respect to a larger participant (and, if so, the frequency and extent of such activity) will depend on a number of considerations, including the Bureau's allocation of resources and the application of the statutory factors set forth in 12 U.S.C. 5514(b)(2). Given the Bureau's finite supervisory resources, and the range of

[142] *See* 20 U.S.C. 1087e.

[143] 5 U.S.C. 601 *et seq.* The term '''small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition after notice and comment].'' *Id.* at 601(4). The term '''small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment].'' *Id.* at 601(5). The Bureau is not aware of any small governmental units or small not-for-profit organizations to which the Final Rule will apply.

[144] 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consultation with the SBA and an opportunity for public comment.

[145] 5 U.S.C. 609.

[146] A business might, hypothetically, be a larger participant of the student loan servicing market yet be a small business for RFA purposes, if the business lost a significant amount of account volume during the second year after qualifying as a larger participant. The Bureau expects such situations, if any, to be quite rare. In addition, if the Bureau aggregates the activities of affiliated companies in part by adding together numbers of accounts, two companies that are small businesses might, together, have an account volume over one million. The Bureau anticipates no more than a very few such cases, if any, in the student loan servicing market.

[147] 13 CFR 121.201 (NAICS code 522390), as amended at 78 FR 37409 (June 20, 2013). Prior to this amendment (and at the time of the NPRM), the small business threshold was $7 million. For the purposes of this analysis, the Bureau assumes that participants in the student loan servicing market will be classified in NAICS code 522390, ''other activities related to credit intermediation.'' NAICS lists ''loan servicing'' as an index entry corresponding to this code. *See* Census Bureau, 2012 NAICS Definition, 522390 Other Activities Related to Credit Intermediation, *available at http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=522390&search=2012* NAICS Search. The Bureau recognizes that there may be larger participants of the student loan servicing market that are primarily engaged in other market activities that fall under other NAICS codes. For example, an entity could have just over 1,000,000 student loan servicing accounts while also engaging in other market activities such as those falling under code 522291 (student loan origination), code 561440 (debt collection), or code 56149 (business support). The thresholds for these codes range from $14 million (NAICS code 56149) to $35.5 million (NAICS code 522291). A larger participant with $20.2 million in receipts from student loan servicing ($1.68 per month per account * 1,000,000 accounts) that also has enough receipts from another market activity to make that activity its ''primary industry'' is likely to have more than $35.5 million in total receipts, which is the highest relevant threshold. *See* 13 CFR 121.107 (establishing that the SBA uses distribution of receipts, employees, and costs to determine an entity's ''primary industry'').

[148] If one or more larger participants services loans it holds, such a firm might not receive monthly servicing compensation for such accounts. However, the Bureau is not currently aware of any small businesses that service student loans they originate or hold and that would meet the larger-participant threshold.

industries over which it has supervisory responsibility for consumer financial protection, when and how often a given student loan servicer will be supervised is uncertain. Moreover, when supervisory activity occurs, the costs that result from such activity are expected to be minimal in relation to the overall activities of a student loan servicer.[149]

Finally, a commenter contended that ''it is unclear whether the CFPB intends to flow down the requirements of the Proposed Rule to service providers of larger participants.'' The same commenter also requested that, if the service providers are subject to supervision, the Bureau provide an RFA analysis of the impact of the Final Rule on service providers that are small businesses. Although the Final Rule does not address service providers, 12 U.S.C. 5514(e) authorizes the Bureau to supervise service providers to larger participants. The Final Rule identifies those student loan servicers who are larger participants and are, therefore subject to Bureau supervision. Thus, pursuant to the Bureau's statutory authority, in conjunction with the supervision of a larger participant encompassed by the Final Rule, the Bureau may also supervise any service providers to that larger participant.

Nonetheless, the Final Rule does not address service providers, and effects on service providers therefore need not be discussed for purposes of this RFA analysis. Even if such effects were relevant, however, the Bureau concludes that, to the extent the Final Rule will result in the supervision of service provides to larger participants, this will not have a significant economic impact on a substantial number of small entities. First, the Bureau does not anticipate that the impact of supervisory activity on such service providers would have any greater economic impact than at the larger participants to which they were connected. Given the Bureau's finite supervisory resources, and its discretion in exercising supervisory authority, the impact at a given service provider would probably be much less than at its associated larger participant.

Second, supervision of service providers to larger participants of the student loan servicing market will not have an impact on a substantial number of small entities. The Bureau reaches this conclusion based on the number of small firms in the relevant NAICS codes. Many of these service providers would be considered to be in the industries with NAICS code 552390, ''Other activities related to credit intermediation.'' According to the 2007 Economic Census, more than 5,000 small firms are encompassed by that code,[150] and the number of those firms that are service providers to the seven student loan servicers who are likely to be larger participants will be only a small fraction of that number.

Accordingly, the Bureau adheres to the certification, in the Proposed Rule, that the Final Rule will not have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

The Bureau determined that the Proposed Rule would not impose any new recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would constitute collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Bureau did not receive any comments regarding this conclusion, to which the Bureau adheres. The Bureau concludes that the Final Student Loan Servicing Rule, which adopts the Proposed Rule in relevant respects, also imposes no new information collection requirements subject to the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 1090

Consumer protection, Credit.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends 12 CFR part 1090, subpart B, as follows:

PART 1090—DEFINING LARGER PARTICIPANTS OF CERTAIN CONSUMER FINANCIAL PRODUCT AND SERVICE MARKETS

■ 1. The authority citation for part 1090 continues to read as follows:

Authority: 12 U.S.C. 5514(a)(1)(B); 12 U.S.C. 5514(a)(2); 12 U.S.C. 5514(b)(7)(A); and 12 U.S.C. 5512(b)(1).

Subpart B—Markets

■ 2. Add § 1090.106 to subpart B to read as follows:

§ 1090.106 Student loan servicing market.

(a) *Market-related definitions.* As used in this subpart:

Account volume means the number of accounts with respect to which a nonbank covered person is considered to perform student loan servicing, calculated as follows:

(i) *Number of accounts.* A nonbank covered person has at least one account for each student or prior student with respect to whom the nonbank covered person performs student loan servicing. If a nonbank covered person is receiving separate fees for performing student loan servicing with respect to a given student or prior student, the nonbank covered person has one account for each stream of fees to which the person is entitled.

(ii) *Time of measurement.* The number of accounts is counted as of December 31 of the prior calendar year.

(iii) *Affiliated companies.* (A) The account volume of a nonbank covered person is the sum of the number of accounts of that nonbank covered person and of any affiliated companies of that person.

(B) If two persons become affiliated companies, each person's number of accounts as of the prior calendar year's December 31 is included in the total account volume.

(C) If two affiliated companies cease to be affiliated companies, the number of accounts of each continues to be included in the other's account volume until the succeeding December 31.

Post-secondary education expenses means any of the expenses that are included as part of the cost of attendance of a student as defined in 20 U.S.C. 1087*ll.*

Post-secondary education loan means a loan that is made, insured or guaranteed under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) or that is extended to a consumer with the expectation that the funds extended will be used in whole or in part to pay post-secondary education expenses. A loan that is extended in order to refinance or consolidate a consumer's existing post-secondary education loans is also a post-secondary education loan. However, no loan under an open-end credit plan (as defined in Regulation Z, 12 CFR 1026.2(a)(20)) or loan that is secured by real property is a post-secondary education loan, regardless of the purpose for the loan.

Student loan servicing means:

(i)(A) Receiving any scheduled periodic payments from a borrower or notification of such payments and

(B) Applying payments to the borrower's account pursuant to the terms of the post-secondary education

[149] As discussed above, the Bureau has estimated that the cost of participating in an examination would be substantially below one percent of annual receipts for a firm near the threshold of one million in account volume.

[150] Census Bureau, 2007 Economic Census, American FactFinder, Finance and Insurance: Subject Series—Estab. and Firm Size: Summary Statistics by Revenue Size of Firms for the United States, *available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_52SSSZ4&prodType=table* (NAICS code 522390).

loan or of the contract governing the servicing;

(ii) During a period when no payment is required on a post-secondary education loan,

(A) Maintaining account records for the loan and

(B) Communicating with the borrower regarding the loan, on behalf of the loan's holder; or

(iii) Interactions with a borrower, including activities to help prevent default on obligations arising from post-secondary education loans, conducted to facilitate the activities described in paragraph (i) or (ii) of this definition.

(b) *Test to define larger participants.* A nonbank covered person that offers or provides student loan servicing is a larger participant of the student loan servicing market if the nonbank covered person's account volume exceeds one million.

Dated: December 3, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1260

RIN 2590–AA35

Information Sharing Among Federal Home Loan Banks

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: Section 1207 of the Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Home Loan Bank Act (Bank Act) to add a new section 20A, which requires the Federal Housing Finance Agency (FHFA) to make available to each Federal Home Loan Bank (Bank) information relating to the financial condition of all other Banks. Section 20A also requires FHFA to promulgate regulations to facilitate the sharing of such information among the Banks. This final rule implements the provisions of section 20A of the Bank Act.

DATES: The final rule is effective on January 6, 2014.

FOR FURTHER INFORMATION CONTACT: Eric M. Raudenbush, Assistant General Counsel, Office of General Counsel, *Eric.Raudenbush@fhfa.gov,* (202) 649–3084; or Jonathan Curtis, Financial Analyst, Office of Program Support, Division of Bank Regulation, *Jonathan.Curtis@fhfa.gov,* (202) 649–3321 (these are not a toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Federal Home Loan Bank System

The Federal Home Loan Bank System (Bank System) consists of twelve Banks and the Office of Finance (OF). The Banks are wholesale financial institutions organized under the Bank Act.[1] The Banks are cooperatives; only members of a Bank may purchase its capital stock, and only members or certain eligible housing associates (such as state housing finance agencies) may obtain access to secured loans, known as advances, or other products provided by a Bank.[2] Each Bank is managed by its own board of directors and serves the public interest by enhancing the availability of residential mortgage and community lending credit through its member institutions.[3] Any eligible institution (generally a federally insured depository institution or state-regulated insurance company) may become a member of a Bank if it satisfies certain criteria and purchases a specified amount of the Bank's capital stock.[4]

B. Banks' Joint and Several Liability and Disclosure Requirements on COs

The Banks fund their operations principally through the issuance of consolidated obligations (COs), which are debt instruments issued on behalf of the Banks by the OF, a joint office of the Banks, pursuant to section 11 of the Bank Act,[5] and part 1270 of the regulations of FHFA.[6] Under these regulations, the COs may be issued only through OF as agent for the Banks, and the Banks are jointly and severally liable for the timely payment of principal and interest on all COs when due.[7] Accordingly, even when COs are issued with one Bank being the primary obligor, the ultimate liability for the timely payment of principal and interest thereon remains with all of the Banks collectively, which creates a need for each Bank to be able to assess the financial condition of the other Banks.

Although the COs themselves are not registered securities under the federal securities laws, the Federal Housing Finance Board (Finance Board)[8] adopted regulations in 2004 requiring each Bank to register a class of its common stock (which is issued only to its member institutions) with the Securities and Exchange Commission (SEC) under section 12(g) of the Securities Exchange Act of 1934 (1934 Act).[9] Each Bank subsequently registered a class of its common stock with the SEC in compliance with that regulation. Separately, HERA included a provision requiring the Banks to register their common stock under section 12(g) of the 1934 Act, and to maintain that registration.[10] Accordingly, each Bank remains subject to the periodic disclosure requirements established under the 1934 Act, as interpreted and administered by the SEC.

C. New Statutory Provision Requiring the Sharing of Bank Information

Section 1207 of HERA added a new section 20A to the Bank Act that requires FHFA to make available to each Bank such reports, records, or other information as may be available, relating to the condition of any other Bank in order to enable each Bank to evaluate the financial condition of the other Banks and the Bank System as a whole.[11] The underlying objective for that requirement is to better enable each Bank to assess the likelihood that it may be required to make payments on behalf of another Bank under its joint and several liability on the COs, as well as to comply with disclosure obligations under the 1934 Act regarding its potential joint and several liability.[12] Section 20A further requires FHFA to promulgate regulations to facilitate the sharing of such financial information among the Banks.[13] Section 20A permits a Bank to request that FHFA determine that particular information that may otherwise be made available is ''proprietary'' (a term that is not defined in the Bank Act) and that the public interest requires that such information not be shared.[14] Finally, section 20A

[1] *See* 12 U.S.C. 1423, 1432(a).

[2] *See* 12 U.S.C. 1426(a)(4), 1430(a), 1430b.

[3] *See* 12 U.S.C. 1427.

[4] *See* 12 U.S.C. 1424; 12 CFR part 1263.

[5] 12 U.S.C. 1431.

[6] 12 CFR part 1270.

[7] *See* 12 CFR 1270.4(a), 1270.10(a).

[8] The Federal Housing Finance Board was the regulator of the Bank System from 1989 through 2008. HERA, which abolished the Finance Board and established FHFA, provides that all regulations of the Finance Board shall remain in effect and shall be enforceable by the Director of FHFA until modified, terminated, set aside or superseded by the Director. *See* Public Law 110–289, section 1312, 122 Stat. 2798 (2008).

[9] 15 U.S.C. 78*l*(g). *See* 69 FR 38811 (June 29, 2004), *codified at* 12 CFR part 998, *repealed,* 78 FR 15869 (March 13, 2013).

[10] *See* 15 U.S.C. 78oo(b).

[11] *See* 12 U.S.C. 1440a.

[12] *See* 12 U.S.C. 1440a(a).

[13] *See* 12 U.S.C. 1440a(b)(1).

[14] *See* 12 U.S.C. 1440a(b)(2).