ARRC Consultation on Fallback Language for New Variable Rate Private Student Loans

Question 1: Should fallback language for variable rate private student loans include a pre-cessation trigger (trigger 4(G)(ii))?
Yes.

Question 2: Please indicate whether any concerns you have about a pre-cessation trigger relate to differences between such a trigger and those for standard derivatives or relate specifically to the pre-cessation trigger itself.
None.

Question 3: If a pre-cessation trigger is not included, what options would be available to market participants to manage the potential risks involved in continuing to reference a Benchmark whose regulator has publicly determined that it is not representative of the underlying market?
If strictly related to the Secondary market, then the only option is to not participate, if an investor views this as a significant risk.

Question 4: The variable rate private student loan language proposed uses simplified language in an effort to be more comprehensible for the consumer market. Is the simplified language proposed here appropriate, or are there concerns with the language not matching ISDA or other cash product language precisely?
Yes, we think the simplified language is appropriate.

Question 5: Is the replacement index determined by the Federal Reserve Board, the Federal Reserve Bank of New York, or a committee endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York the best choice for the first step of the waterfall? Why or why not?
Yes since there is no ideal solution. This solution seems appropriate since the committee's composition has a vested interest in a properly functioning market, but no specific pecuniary interest in any particular bond or subset or bonds. However, one consideration is the potential inclusion of the SEC in the committee, as it is the formal regulatory body.

Question 6: As noted above, in addition to recommending SOFR, the ARRC may recommend forward-looking term SOFR rates if it is satisfied that a robust, IOSCO- compliant term rate that meets its criteria can be produced. If the ARRC recommends forward-looking term rates (e.g., 1-month, 3-month, 6-month, etc.) and a corresponding spread adjustment, should a spread-adjusted term rate be the replacement index for variable rate private student loans, or would a spread-adjusted average (simple or compounded) of SOFR be more appropriate? Please provide support for your answer.
There should be a spread adjustment and it should match the term of whatever was being marketed, in order to minimize basis risk.

Question 7: Should the Note Holder have the responsibility as the 2nd and last step of the waterfall? Why or why not?
Yes, there is no reason to change the market convention.

Question 8: Should the Note Holder have the ability to make adjustments (positive or negative) to the loan's margin to more closely approximate the LIBOR-based interest rate present at the time of replacement? Why or why not? If you do not believe the Note Holder should make adjustments to the loan's margin, and potential replacement indices diverge from the value of the current Index, what provision or step should be taken to preserve that consistency?
Yes, see answer to question 6 (the Trustee is the Note Holder and is formally neutral).

Question 9: If the Note Holder is a trust, is there some entity other than the Note Holder that should be responsible for identifying the replacement Index if Step 1 of the waterfall fails? Please provide sufficient rationale for your answer.
No, there is no reason to change the market convention.

Questions 10-12: N/A