June 15, 2020

Alternative Reference Rates Committee (ARRC)

Via electronic submission to: arrc@ny.frb.org

Re: ARRC Consultation Regarding More Robust LIBOR Fallback Contract Language for New Variable Rate Private Student Loans

Discover Student Loans appreciates the opportunity to provide comments to the ARRC Consultation Regarding More Robust LIBOR Fallback Contract Language for New Variable Rate Private Student Loans. Our responses to each question posed in the consultation are detailed below.

Questions about Triggers:

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

> Discover agrees with including a pre-cessation trigger in the fallback language which allows for replacement when the index is no longer reliable or representative. In order to future-proof the Note to the best extent possible, we believe the Note Holder should be responsible for determining when the Index is no longer reliable instead of requiring an official public statement an administrator or regulator.

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.

> N/A

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?

> Discover strongly recommends including a pre-cessation trigger.

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?

> We agree that clear, straight forward language is important in the student loan market and are not concerned that the language does not match ISDA or other cash product language precisely.

Questions about Replacement Index and Margin:

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?

Discover believes the Note Holder should be responsible for the final decision on a comparable replacement Index that is in compliance with any applicable law in order to protect against future changes in regulatory structure. In the future, it is possible that a single replacement Index will not be best for all financial market participants. Placing the responsibility for determining the replacement Index with the Note Holder allows smaller market segments, such as private student loans, to choose the best option.

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 it criteria can be produced. If the ARRC recommends forwarding-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 compound) of SOFR be more appropriate? Please provide support for your answer.

A spread-adjusted term rate would be more comparable to the Index Discover currently uses for variable rate student loan products (e.g. 3-Month LIBOR) than a backwards looking average rate.

Question 7: Should the Note Holder have the responsibility as the 2nd and last step of the waterfall? Why or why not?

As noted in the response to Q6, Discover believes the Note Holder should be responsible for the final decision on a comparable replacement Index.

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?

Discover agrees that the Note Holder should have the ability to make adjustments to the loan margin at the time of replacement in order to provide the customer with a new variable interest rate that is consistent with the rate prior to Index replacement.

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.

N/A

Other Questions and General Feedback:

Question 10: Will this language have unintended consequences not considered by the ARRC working group? If so, please explain and provide information about why this language would present challenges. If there are concerns with this proposed language, please be sure to specify if the concerns relate to this proposed language, or to Index replacement language in general.

N/A

Question 11: Is there any provision in the proposal that would significantly impede variable rate private student loans originations? If so, please provide a specific and detailed explanation.

N/A

Question 12: Please provide any additional feedback on any aspect of the proposal.

We have provided alternate sample fallback language below:

(G) Replacement Index and Replacement Margin

We may replace the Index with an index that is in compliance with applicable laws and we reasonably determine is comparable (the "Replacement Index") if, in our sole opinion, the Index is no longer appropriate due to reduced availability or reliability, regardless of whether the Index is still published (a "Replacement Event"). In addition to selecting the Replacement Index, we may adjust the Margin so that, on the date of substitution, the resulting variable interest rate is consistent with the former variable interest rate (the "Replacement Margin"). Thereafter, the variable rate will change based on the Replacement Index using the Replacement Margin. The Replacement Index is a pricing index and does not represent the lowest or best interest rate available to borrowers at any bank at any given time. If at any time the fixed or variable interest rate as provided in this section is not permitted by applicable law, interest will accrue at the highest rate allowed by applicable law. The interest rate will never be higher than the maximum rate disclosed in your Final Disclosure(s).

Upon selection, the Replacement Index and the Replacement Margin, if any, will be used to determine my interest rate and monthly payments on Change Dates that are more than ____ days [e.g. 20 days] after a Replacement Event has occurred and notice is mailed or delivered under section (F). The Index and Margin could be replaced more than once during the term of my Note , but only if another Replacement Event occurs. After a Replacement Event, all references to the "Index" and "Margin" shall be deemed to be references to the "Replacement Index" and "Replacement Margin."

Discover appreciates the ARRC guidance and support in transitioning from LIBOR. We are happy to discuss our responses further or provide any additional information that may be helpful.

Thank you

Discover Student Loans