To: The Alternative Reference Rates Committee (ARRC) , Federal Reserve Bank of New York

From: Sallie Mae Bank

May 28, 2020

RE: Comments on the ARRC Consultation on LIBOR Fallback Language for New Variable Rate Private Student Loans

Sallie Mae Bank (Sallie Mae) hereby submits our response to the ARRC Consultation on LIBOR Fallback Contract Language for New Variable Rate Private Student Loans ("Consultation"). This response is intended to answer the 12 questions posed in the Consultation and include within those answers Sallie Mae's recommendations and comments for template contract language to provide an orderly and safe transition to an alternative reference rate.

As a general comment, because the cessation (rather than the unavailability or failure of publication) of LIBOR was not a reasonably anticipated event and thus has not previously been addressed in student loan agreements, we support providing template fallback language for new volume promissory notes that lenders can use in anticipation of the transition from LIBOR. However, such template language should be limited to the principles and mechanics of when and how a lender should/may transition to a new index, whatever that index may be. Because creditors have different operational and financial concerns, we believe that creditors should have some discretion, within the confines of the law, regulations, and safety and soundness principles, to set these terms. Including language in this Consultation which goes beyond the substitution and transition of LIBOR is outside the scope of the purpose of this Consultation and inappropriate for ARRC to recommend.

We believe that the template should principles-based and articulate a reasonableness standard to address one of the primary concerns with the LIBOR transition, namely, how to satisfy the overarching concern that creditors will leverage the transition to take advantage of or have a windfall at the expense of the consumer. The template language should include an articulation of the standard that any action taken will be in good faith to minimize any harm the consumer. However, we caution against over-engineering the template language as another overarching concern is that the consumer should be able to understand how and when the index will be changed and the impact these changes will have.

Within our responses, we propose additional precessation triggers to permit creditors the discretion to transition prior to any cessation event and to account for unanticipated events.

As a final general comment, we recommend that the Consultation and any template language should clearly be positioned as a recommendation for the industry and the student loan product and is expressly disclaimed to set any type of legal standard for enforceability or otherwise.

<u>Responses to Questions Posed in Consultation:</u>

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

Response: *Yes, precessation triggers should be included. The current recommended language contains only two Replacement Events that will act as triggers, and they are each is solely dependent upon a third party to act. Creditors/servicers should have the discretion to begin their transition at an earlier (or later) date than the occurrence of either of the listed Replacement Events. As such we recommend that more precessation triggers be added that allow the creditor, in its discretion but subject to a good faith standard, to change the index if the creditor reasonably determines that the methodology used to produce the index has materially changed or that the continued use of the index would be unfair, deceptive, or otherwise inappropriate or harmful to the borrower(s), and that each of these determinations shall be informed by any determination made or guidance provided by the applicable governing federal regulatory agency .*

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.

Response: *Our concern regarding the listed Replacement Events, either of which could be a trigger, is that creditors do not have the discretion to transition at time which would be more appropriate for that creditor. Additionally, even though the FSA has made a statement that it will no longer require banks to submit rates to it for calculation of LIBOR, there is a real possibility that LIBOR may continue to be calculated and provided to the general public. We provide suggested additional triggers in the Response to Question 1.*

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?

Response: *Precessation triggers should be included to help mitigate the risks of a disorderly transition, lacking consistency in the market, and exposure to litigation.*

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?

Response: *Please see responses to Questions 1 and 2.*

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?

Response: *No. This template language makes the assumption that every creditor will want to transition to SOFR. We believe that the replacement index should be at the discretion of the creditor, who will know and understand the finance, operational, and other concerns relating transitioning to a new index. One option is to not make the steps a waterfall but rather an inventory of the steps that will be taken after a trigger event.*

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

Response: *Because the ARRC has not proposed a spread-adjusted average or a term rate, we have no comment on this question at this time.*

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

Response: *We believe that the steps should not be waterfalled, but rather options that can be taken by the creditor.*

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?

Response: *Yes.*

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.

Response: *We do not think a waterfall approach is appropriate for the transition as it deprives creditors the discretion to choose when they should transition.*

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 concerns relate to this proposed language, or to index replacement language in general.

Response: Please see our general comments at beginning of this response.

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.

Response: Please see our general comments at beginning of this response.

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

Response: In addition to the general comments, we recommend that the scope of the recommendation be limited to providing transition language for creditors to use to transition away from LIBOR. Additionally, consistent with our recommendation of principles-based language, our caution against over-engineering the template language, and allowing the creditor to have the discretion to set the loan terms, we recommend striking the content in Section 2 and Section 4 (A-F). To the extent these sections

are not struck from the template, efforts should be made to sync terms to regulatory terms or terms used commonly in the student loan market. One example is changing the term "adjustable" to "variable."