

August 15, 2022

PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division  
U.S. Department of Education  
400 Maryland Avenue SW, LBJ, Room 6W208D  
Washington, DC 20202-8240

**Docket No.: ED-2022-SCC-0084**

**Title: Agency Information Collection Activities; Comment Request; Federal Family Education Loan Program (FFELP) Secured Overnight Financing Rate (SOFR) Election Form**

Thank you for the opportunity to provide comments on the Information Collection Request for the FFELP SOFR Election Form as it relates to the Federal Family Education Loan Program (FFELP) special allowance payment (SAP) index transitioning from the London Interbank Offered Rate (LIBOR) to the Secured Overnight Financing Rate (SOFR). Our comments include the following three items:

#### **Clarification of Triggering Event**

The *Federal Register* notice states that the transition of the FFELP SAP from LIBOR to SOFR may occur any time on or before June 30, 2023, **“However, a FFEL Program lender or beneficial holder must transition to the SOFR based SAP calculation by July 1, 2023, as a condition of continued participation in FFEL Program.”** We ask you to remove or clarify the sentence. Receipt of the waiver as a condition of continued participation in FFELP is not provided for under current law nor is it included in the Adjustable Interest Rate (LIBOR) Act (LIBOR Act), and we believe such requirement is beyond the scope of the Secretary’s authority. The LIBOR Act, under the SAP Fallback Provisions, specifically states that if the waiver is not received before the first of three qualifying events, then the SAP that is based on LIBOR will be transitioned to 30-day average SOFR **by operation of law** – no submission of a waiver form is required. The three qualifying events are the first of: “(AA) the date on which the ICE Benchmark Administration (‘IBA’) has permanently or indefinitely stopped providing the 1-month United States Dollar LIBOR (‘1-month USD LIBOR’) to the general public; (BB) the effective date of an official public statement by the IBA or its regulator that the 1-month USD LIBOR is no longer reliable or no longer representative; or (CC) the LIBOR replacement date.” Once one of these events occur, the SAP calculation will be based on SOFR effective as of the first day of the following calendar quarter and will remain in effect for all subsequent quarters. We request the Department clarify that all references to a waiver are related to LIBOR-based SAP transitioning to SOFR-based SAP, and any FFELP SAP that is based on Commercial Paper or Treasury Bills are exempt from this Federal Register and any Dear Colleague Letter that is published in relation to the transition from LIBOR-based SAP to SOFR-based SAP.

The LIBOR replacement date is defined in the LIBOR Act as “the first London banking day after June 30, 2023, unless the Board determines that any LIBOR tenor will cease to be published or cease to be representative on a different date.” As June 30, 2023 is a Friday, the first London banking day would be Monday, July 3, 2023, not July 1, 2023. For lenders/holders who have not exercised their option to transition their LIBOR-based SAP to SOFR by June 30, 2023, clarification from the Department is needed on how to bill for SAP for the quarter beginning July 1, 2023.

#### **Forms – Use of “Corporation” and CEO Authorizing Statement**

The forms are generally similar to those provided to the FFELP community in 2012 when FFELP lenders/holders had to elect either a commercial paper-based SAP, or a LIBOR-based SAP. However, the forms seem to imply that all FFELP holders/lenders are corporations –in fact, many lenders/holders are state entities or agencies.

We recommend that, in all forms, the word or references to “corporation” is replaced by something more neutral such as organization, entity, or specific terms such as lender or holder/beneficial holder.

Additionally, the form titled, “Chief Executive Officer (CEO) Authorizing Statement” is not inclusive of the FFELP lenders/beneficial holders that are state agencies. Many of these organizations do not have a “CEO” – the authorizing individual may be a Director, President, or other such position. We request that references to a CEO be replaced with “authorizing individual.” We recommend, as you have at the end of the SOFR Election – Holder form, that the authorizing individual provide their name, title, name of company, and certify that in their capacity, they have the authority to execute the LIBOR waiver and SOFR election on behalf of the company. At a minimum, the Department should state that lenders/holders can adapt the terminology to their structure, as was the case in 2012.

Finally, we recommend adding to the “Authorizing Statement” an effective date, in addition to a date of execution. The LIBOR Act provides that an early transition to SOFR “shall be effective with respect to a portfolio as of the first day of the calendar quarter following the applicable effective date of the waiver is received by the Secretary.” Specifying on the form an effective date or stating that the date of execution is the effective date will provide greater clarity for all parties.

### **Request to Expedite**

We request that the Department declare the clearance of these forms an emergency, which would allow FFELP lenders/holders to transition their LIBOR-based SAP to SOFR-based SAP at an earlier date. If allowed to proceed at the normal clearance process, the earliest that these forms would become effective would be sometime during the fourth quarter of calendar year 2022. This would mean that SOFR could not be used until the first quarter of calendar year 2023. Congress intended to give FFELP holders/lenders the ability to transition to SOFR-based SAP as soon as possible. Providing these forms as early as possible will allow early transitions to occur and avoid the possibility of all lenders/holders transitioning close to the deadline, which could clog the financing markets as lenders/holders revise their financings to match the SOFR rate on their loan assets.

Education Finance Council, National Council of Higher Education Resources, and Student Loan Servicing Alliance proudly represent state, nonprofit, and private organizations that partner with the Department to carry out the federal higher education aid or student aid programs that millions of families rely on every year to pursue postsecondary education. Our members work alongside the Department by operating federal college access programs, servicing federal student loans, and helping struggling and defaulted borrowers successfully return to good standing. In addition to the work our members do through federal grants and contracts, they also help individuals save for college, understand the affordable options available to finance their education, complete their programs, and find good-paying jobs after graduation. Every year our members support millions of families as they improve their lives by enrolling in college.

We appreciate the consideration of our comments and are available to respond to any questions you may have.

Sincerely,



Gail daMota  
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James Bergeron  
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Scott Buchanan  
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