

Comments were received from the Education Financial Council, National Council of Higher Education Resources, and Student Loan Servicing Alliance. The Pennsylvania Higher Education Assistance Agency asked to be associated with the comments and responses provided by their letter. Below are the comments and FSA's responses.

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.

Response: Please see revised Supporting Statement question 1.

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.

Response: We concur. DCL Gen-22-12, issued on August 9, 2022, specifies that the LIBOR Act amended the HEA to allow lenders or beneficial holders of FFEL program loans to replace LIBOR-based SAP to SOFR. The Act did not address loans whose SAP is based on Commercial Paper or the 13-week Treasury Bill.

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.**

Response: DCL Gen-22-12 issued on August 9, 2022 provides guidance on how to bill for SAP.

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.

Response: Lenders or holders may adapt the terminology that is applicable to their organizational structure. However, those changes must be submitted to FSA for approval prior to submission. FSA will review the proposed changes and will provide a response to the submitter

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.

Response: We agree that the lenders or holders may adapt the terminology that is applicable to their organizational structure. However, those changes must be submitted to FSA for approval prior to submission. FSA will review the proposed changes and will provide a response to the submitter.

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.

Response: FSA will provide an acknowledgement back to the lender/holder with an effective date upon review of their submission. If the submission is incomplete or missing any required information, it will be returned to the lender/holder.

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.

Response: FSA does not have the authority to declare these forms immediately available under an

Federal Student Aid (FSA) response to comments received during the 60 day public comment period for Docket Number ED-2022-SCC-0084 for the information collection Federal Family Education Loan (FFEL) Program Secured Overnight Financing Rate (SOFR) Election Form

emergency clearance. That process is only available through approval by the Office of Management and Budget, Office of Information and Regulatory Affairs under limited circumstances which do not apply here. FSA believes that the provision of the Dear Colleague Letter GEN-22-12 published August 9, 2022 allows FFEL Program lenders and holders the information needed to prepare for the filing of the forms being cleared in this information collection.