DAILY BRIEFING

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Senate Banking Committee Holds Hearing on LIBOR Transition

Today, the Senate Banking, Housing, and Urban Affairs Committee held a hearing titled, "The LIBOR Transition: Protecting Consumers and Investors." In his opening statement, Chairman Sherrod Brown (D-OH) mentioned that the nation is still cleaning up from the scandal from the London Interbank Offered Rate (LIBOR), which dates back to 2008. "Our financial system is finally transitioning away from LIBOR," the Chairman said. "Today, we will consider how the financial system can move on from this benchmark set by a handful of the world's largest banks – a system we found out was ripe for exploitation. Part of that transition involves dealing with trillions of dollars in legacy contracts that are tied to LIBOR, and that will continue after the rate is discontinued in June of 2023." Chairman Brown referred to H.R. 4616, the Adjustable Interest Rate (LIBOR) Act, bipartisan legislation that is pending in the U.S. House of Representatives, which addresses legacy problems. He said that Sens. Jon Tester (D-MT) and Thom Tillis (R-NC)

are preparing a Senate companion. Chairman Brown closed his statement by stating that, "We have proven we can come together on this committee to find areas of agreement, and to advance common sense solutions for the people we serve. My hope is we can do the same on LIBOR." In his **opening statement**, Ranking Member Patrick Toomey (R-PA) indicated that, while the Secured Overnight Funding Rate (SOFR) is appropriate for the relatively small universe of tough legacy contracts, banks must have the option to choose among qualified benchmark rates for their new contracts, including credit-sensitive rates. He expressed concern that for, new contracts, financial regulators may mandate the use of SOFR. Ranking Member Toomey described the view of Professor Saule Omarova, the White House's nominee to head the Office of Comptroller of the Currency, that rates be pre-approved by the federal government as being radical.

In his **testimony**, Andrew Pizor, Staff Attorney for the National Consumer Law Center, encouraged support for H.R. 4616, but indicated that there is no consensus on what "conforming changes" to existing contracts should be permitted. He said that the immunity language in the House bill is too broad as the safe harbor includes "consumer claims arising out of the determination and performance of conforming changes. We are concerned that disreputable actors could harm consumers by taking an overly broad interpretation of what conforming changes are necessary to implement a new index." In his **testimony**, J. Christopher Giancarlo, Senior Counsel for Willkie Farr & Gallagher LLP and former Chairman of the U.S. Commodity Futures Trading Commission, spoke to the need for choice in setting benchmark rates saying, "A one-size-fits-all" response to the demise of LIBOR would be a source of systemic risk to the U.S. economy." In his **testimony**, Michael Bright, Chief Executive Officer of the Structured Finance Association, said that investor members need to be assured that the LIBOR scandal never happens again and that, going forward, they can rely on the integrity of that index. He estimated that there are $16 trillion in contracts that have no realistic means to be renegotiated and amended, and that a comprehensive but narrow safe harbor is needed. In his **testimony**, Thomas Wipf, Chair of the Alternative Reference Rate Committee (ARRC) and Managing Director of Morgan Stanley, said that, for contracts that do not grant a particular party the right to name a successor rate to LIBOR and have no fallback language or language that refers only to a poll of banks or some past value of LIBOR, the proposed federal legislation "recognizes that a unique successor rate must be named in order to avoid legal conflict and it names a successor rate based on SOFR for that purpose." He said many market participants will choose SOFR going forward, but the ARRC supports choice.

During the question-and-answer period, Chairman Brown asked Mr. Pizor why federal legislation was needed; Mr. Pizor said that he believed industry was paralyzed by litigation risk, and that, while his first choice would be to mandate use of SOFR, a safe

harbor would encourage its use. He said that any replacement rate should match the expectations of the parties, and that SOFR does that. Mr. Wipf said that the financial market needs is confidence and Congress is on a tight "shot clock." Sen. Jack Reed (D-RI) asked Mr. Pizor what provisions Congress should consider incorporating into federal legislation to protect consumers; Mr. Pizor said the transition should not be a profit-making opportunity and that SOFR is the only benchmark where the expectations of the parties are matched. Sen. Reed asked Mr. Wipf what design features are needed for a benchmark rate; Mr. Wipf said that the elimination of expert judgment is needed. Sen. Bill Hagerty (R-TN) said that, without legislation, multiple parties will end up in court, which would be costly and lead to inconsistent results. Mr. Pizor said that the sooner Congress acts, the better. Sen. Bob Menendez (D-NJ) said that he is concerned about the lack of protection for private student loan borrowers, and asked whether a lender can set a higher replacement rate. Mr. Pizor said yes, and that the best thing Congress can do is establish a safe harbor that induces lenders to choose an alternative to LIBOR. Sen. Menendez also asked about the status of the Consumer Financial Protection Bureau rule that would facilitate the transition from LIBOR. Mr. Pizor said that the Bureau should not wait until the last minute and should finish its rulemaking. He also said it is up to Congress to ensure that student loan borrowers do not pay a higher rate. Sen. Tester asked about risks as LIBOR ends. Mr. Pizor said there could be instability, and that rates might go up. Mr. Wipf repeated that, for legacy contracts, the ARRC recommends the adoption of SOFR. For new contracts, his advice is for borrowers to "know your reference rate."
For more coverage of the hearing, including an archived webcast, visit the **committee website**.

Department of Education Resumes Negotiated Rulemaking Sessions on Student Aid

Today, the U.S. Department of Education held the second day of the second series of negotiated rulemaking sessions for its Affordability and Student Loans Committee, which has been formed to review and revise federal regulations around total and permanent disability (TPD) discharge, closed school discharge, interest capitalization, the Public Service Loan Forgiveness (PSLF) Program, the borrower defense to repayment process, Pell Grants for Prison Education programs, and income-driven repayment.

During today's session, committee members talked about the need to continue the discussion on closed school discharge given that 75 percent of the members disapproved of the proposed regulations during the last temperature check. Specifically, committee members discussed whether the "comparable program requirement" should be dropped

for automatic discharges for borrowers who attended school pre-2019 and pre-2014, and whether the proposed language is centered on institutions of higher education more than on students. The committee also reviewed the proposed interest capitalization language circulated by the Department based on discussion from the last work session. The Department repeated that it is only eliminating interest capitalization where it is not statutory and are not going to apply the new standard retroactively or impose a cap on required capitalization events. The Department confirmed that the proposed changes do not apply to Federal Family Education Loan program loans, only to Federal Direct Loans. The Department asked for a 'temperature check' on the proposed draft language and there was consensus from the non-federal negotiators. The committee then turned its attention to the proposed rules on PSLF with multiple members asking the Department for an update on how the recently announced rollout of the limited waiver provision has gone and whether federal student loan servicers had received guidance from the agency. The Department said that it will provide an update to the committee shortly. After discussion on the proposed regulations, the Department asked for a 'temperature check' for tentative agreement. There was no consensus from the non-federal negotiators based on the current draft language provided by the Department.

The next committee meeting will take place tomorrow from 10:00 a.m. – 12:00 p.m. and 1:00 p.m. – 4:00 p.m. with a public comment period from approximately 3:30 p.m. – 4:00 p.m. Those who are interested in attending the sessions are required to register separately for each day. To register as a participant, click **here**.

Sen. Feinstein and Rep. Harder Send Letter to Secretary Cardona on PSLF

Today, Sen. Dianne Feinstein (D-CA) and Rep. Josh Harder (D-CA) sent a letter to Education Secretary Miguel Cardona urging him to update the Public Service Loan Forgiveness (PSLF) program to ensure that eligible physicians at private, nonprofit community hospitals in California and Texas can qualify for forgiveness under the program. "PSLF, which helps federal student loan borrowers who take on public service jobs, is part of the Education Department's ongoing effort to fix the troubled program," the letter says. But "doctors in California and Texas treating patients in private, nonprofit community hospitals are not able to access forgiveness under the program due to the current implementing regulations …" The letter also recommends that the U.S. Department of Education adopt the definition of "full-time job as health care practitioner" from H.R. 1133/S. 311, the Stopping Doctor Shortages Act. The legislation defines 'full-time professionals engaged in health care practitioner occupations' to include an

individual who: (i) has a full-time job as a health care practitioner; (ii) provides medical services in such full-time job at a nonprofit hospital or public hospital or other nonprofit or public health care facility; and (iii) is prohibited from being employed directly by such hospital or other health care facility by State law." The letter concludes by saying that, the "inequity in the implementation of this program is hurting patients in California and Texas as current and new physicians move elsewhere to practice medicine. With severe doctor shortages only projected to grow in each state, and as we continue to recover from an ongoing pandemic, we urge you to allow doctors in California and Texas providing critical care in nonprofit hospitals to access the Public Service Loan Forgiveness program."

CFPB Report Finds Credit Report Disputes Common in Minority Neighborhoods

Today, the Consumer Financial Protection Bureau (CFPB) today released a new report titled, **Disputes on Consumer Credit Reports**, which found that consumers in majority Black and Hispanic neighborhoods, as well as younger consumers and those with low credit scores, are far more likely to have disputes appear on their credit reports. The research is a part of a series of reports focusing on trends in the consumer financial marketplace, and uses data on auto loan, student loan, and credit card accounts opened between 2012 and 2019. The report shows that majority Black and Hispanic neighborhoods continue to face significant challenges with credit records. In nearly every credit category reviewed (auto loans, student loans, credit cards, and retail cards), consumers residing in majority Black areas were more than twice as likely to have disputes appear on their credit reports compared to consumers residing in majority white areas. Under the Fair Credit Reporting Act, people have a right to file a dispute with credit reporting companies to correct inaccuracies on their reports. The Fair Credit Reporting Act requires consumer reporting companies to process and investigate the disputes in a timely manner, and correct any inaccuracies uncovered by the investigation. According to today's report, these kinds of disputes are common.

U.S. Department of Education News

For today's *Federal Register*, click **here**.
The following announcement was posted to the Information for Financial Aid Professionals website:

- **(APP-21-22) 2022–23 Federal School Code List of Participating Schools (November 2021)**

General News

Forbes and *Yahoo News* report that Debt Collective, a progressive group supportive of broad-based student loan forgiveness, received a copy of a heavily-redacted memo on the President's legal authority to cancel student loan debt through a recent Freedom of Information Act request.

Inside Higher Ed reports that the shortage of financial aid employees at some institutions of higher education is especially worrisome given that the U.S. Department of Education is planning to beef up its enforcement of federal student aid program rules.

Fortune reports that Rep. Alexandria Ocasio-Cortez (D-NY) says it is time to 'bring the heat on President Biden to cancel student loans.'

Forbes provides a breakdown of the $11.5 billion in federal student loan forgiveness that has been issued by the U.S. Department of Education and what portion is automatic and what is not.

Bankrate reports that free community college has been dropped from the Build Back Better Act, and examines other current student loan news for the week of November 1, 2021.

Inside Higher Ed reports that new college graduates face the rosiest job market since the 2008 recession, according to the latest annual recruiting trends survey by Michigan State University's Collegiate Employment Research Institute.

University Business examines eight ways to better connect preschool to promising careers for all students based on an analysis of the nation's youth policies by the Georgetown University Center on Education and the Workforce.

Inside Higher Ed reports that the National Education Equity Lab has created a model for helping low-income high school students and elite colleges connect. With philanthropists and universities partnering to provide college-level courses at no cost, many of the students have gone on to top colleges.

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