Questions for Mr. Andrew Pizor, Staff Attorney, National Consumer Law Center, from Senator Elizabeth Warren:

1) Do existing student loan contracts that use LIBOR generally specify the required replacement rate if LIBOR is terminated?

ANSWER: No. Most existing LIBOR contracts grant note holders sole discretion to choose a new rate to replace LIBOR without specifying any particular replacement and also to make adjustments at the note holder's sole discretion. For example, a recent student loan contract from Discover states:

> If the 3-month LIBOR Index is no longer available, we will substitute an index that is comparable, in our sole opinion, and we may adjust the Margin so that the resulting variable interest rate is consistent with the variable interest rate described in this paragraph. If at any time the fixed or variable interest rate as provided in this paragraph is not permitted by applicable law, interest will accrue at the highest rate allowed by applicable law.

It is also not clear that market participants have adjusted their contracts to reflect the upcoming cessation of LIBOR.

2) Please describe the implications of student loan servicers having the discretion to choose an alternative rate to the Secured Overnight Financing Rate (SOFR), including the impact on student loan borrowers.

ANSWER: Allowing servicers the discretion to choose the replacement rate creates significant risk for consumers. The primary risk is that servicers will choose a rate that generates more profit for them and the note holder by being consistantly higher than LIBOR, such as the prime rate. Or they may choose a rate that is unsuitable for other reasons, such as a rate that is more volatile, one that is less representative of market rates, one that is not based on actual transaction data, or one that is easily manipulated—as the LIBOR was. For example, as consumer advocates have noted, industry representatives had advocated for the use of Ameribor and the Constant Maturity Treasury (CMT) rate to replace LIBOR, even though Ameribor is based on an extremely thin market relative to the market SOFR references and CMT is based on "indicative" rate quotations instead of actual transaction data.

3) Are existing rules sufficient to protect against companies putting any costs of the LIBOR transition onto consumers through an increase in interest rates? If not, what new protections are needed to mitigate any harms to student borrowers?

ANSWER: No, they are not. Right now, companies can readily replace LIBOR with rates that are more favorable to them at borrowers' expense, and many contracts allow note holders to make additional changes to the terms of consumer contracts (such as adjusting the margin on the loan) in the context of the adoption of a new reference rate that could put borrowers at risk.

As we previously recommended to the Consumer Financial Protection Bureau, several measures are necessary to protect student borrowers:

- The CFPB should signal its expectation that industry participants will select SOFR as a replacement index and that failure to do so will invite increased scrutiny of compliance with Regulation Z.
- Consumers should be informed at each critical stage of the transition.
    - The CFPB should require that lenders and servicers make information about the transition, including the new replacement rate, readily available to existing and prospective customers, even when their debts transition to spread-adjusted SOFR.
    - It should be expected that institutions that continue making loans that use the LIBOR as an index ahead of the rate's cessation will add unambiguous language to their loan contracts clearly articulating the index that any LIBOR-based loan will fall back to upon LIBOR's cessation and any associated changes that will be made to the loan's margin at that time. Lenders that do not adopt the ARRC's recommendations for fallback language should be subjected to heightened scrutiny from the Bureau.
- The CFPB should use all available authorities to ensure the timely transition away from LIBOR.

The Bureau's recently announced final rule is a strong step in the right direction, but more is still necessary.