



Consumer Finance Monitor

CFPB, Federal Agencies, State Agencies, and Attorneys General

CFPB finalizes Regulation Z changes to address discontinuation of LIBOR index

By **John L. Culhane, Jr.** on December 9, 2021

The CFPB has issued **a final rule** amending Regulation Z to address the discontinuation of the London Inter-Bank Offered Rate (LIBOR) that is currently used by many creditors as the index for calculating the interest rate on credit cards and other variable-rate consumer credit products. In 2017, the United Kingdom's Financial Conduct Authority (FCA), the regulator that oversees the panel of banks on whose submissions LIBOR is based, announced plans to discontinue LIBOR after 2021. The FCA subsequently announced that no LIBOR indices will be available after June 30, 2023.

The final rule is effective on April 1, 2022, with the exception of certain changes to two post-consummation disclosure forms that are effective on October 1, 2023. The mandatory compliance date for revisions to Regulation Z change-in-terms notice requirements is October 1, 2022 and the mandatory compliance date for all other provisions of the final rule is April 1, 2022.

The key Regulation Z amendments consist of the following:

Open-end credit.

Change in index. Regulation Z currently allows HELOC creditors and card issuers to change an index and margin used to set the APR on a variable-rate account when the original index "becomes unavailable" or "is no longer available." Having determined that all parties would benefit if creditors and issuers could replace a LIBOR index before LIBOR

becomes unavailable, the final rule includes a new provision that allows HELOC creditors and card issuers (subject to contractual limitations) to replace a LIBOR index with a replacement index and margin on or after April 1, 2022, which is before LIBOR is expected to become unavailable.

The replacement index must be either an established index with a history or a newly established index with no history. An established index with a history may only be used if the index's historical fluctuations are substantially similar to those of the LIBOR index. Whether it is newly established or an established index, the replacement index and replacement margin in effect on October 18, 2021 must produce an APR that is substantially similar to the APR calculated using the LIBOR index in effect on October 18, 2021 and the previously applicable margin. (If the replacement index was not published on October 18, 2021, the creditor or issuer must base its determination on the LIBOR index and replacement index as published the next calendar day. However, if the replacement index is a spread-adjusted index based on the Secured Overnight Financing Rate (SOFR) as described below, the creditor or issuer must use the LIBOR index value on June 30, 2023 and the SOFR-based spread-adjusted index value on the first date it is published.)

The final rule includes the Bureau's determinations that (1) the prime rate published in the Wall Street Journal has historical fluctuations substantially similar to the those of the 1- and 3-month U.S. Dollar LIBOR indices, and (2) the spread-adjusted indices based on the SOFR recommended by the Alternative Reference Rates Committee (ARRC) to replace the 1-, 3-, and 6-month and 1-year U.S. Dollar LIBOR indices have historical fluctuations substantially similar to those of the 1-, 3-, and 6-month and 1-year U.S. Dollar LIBOR indices. (The ARRC was convened by the Federal Reserve Board and the New York Fed to address the transition from LIBOR.)

Change-in-terms notices. Regulation Z currently does not require HELOC creditors or card issuers to provide a change-in-terms notice when the change involves a reduction of any component of a finance charge or other charge. The final rule creates an exception that requires creditors or issuers, on or after October 1, 2021, to provide a change-in-terms notice when the margin is reduced in conjunction with replacement of a LIBOR index. The change-in-terms notice must disclose the replacement index and new margin. From April 1, 2022 through September 30, 2022, a creditor or issuer has the option of disclosing a

reduced margin in a change-in-terms notice that discloses the replacement index for a LIBOR index. The final rule also adds new commentary on how creditors can disclose information about the periodic rate and APR in change-in-terms notices when replacing a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC.

Rate increase reviews. Regulation Z currently requires a card issuer, when increasing the rate on a credit card account, to periodically review the increased rate. The final rule creates an exception from this requirement for rate increases that result from the replacement of a LIBOR index. It also adds a provision establishing conditions for how an issuer that was already subject to a periodic review requirement before transitioning from a LIBOR index can terminate that requirement.

Closed-end credit. Regulation Z currently provides that a refinancing subject to new disclosures results if a creditor adds a variable-rate feature to a closed-end credit product but that a variable-rate feature is not added when a creditor changes the index to one that is “comparable.” The final rule adds new commentary that provides examples of the types of factors to be considered in determining whether a replacement index is a “comparable” index to a particular LIBOR index. As an example, the new commentary states that a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction from the 1-, 3-, 6-month or 1-year U.S. Dollar LIBOR index to the spread-adjusted index based on the SOFR recommended by the ARRC to replace the 1-, 3-, 6-month or 1-year U.S. Dollar LIBOR index, respectively, because the replacement index is a comparable index to the corresponding U.S. Dollar LIBOR index.

FAQs. Contemporaneously with the final Regulation Z amendments, the CFPB also issued **final LIBOR Transition FAQs**. The CFPB indicates that the FAQs “address Bureau regulatory requirements for both existing accounts and new originations as they complete the steps necessary to discontinue the use of LIBOR.” The FAQs are divided into sections that address the following:

- All consumer financial products and services
- Adjustable-rate mortgage products
- Private student loan products

- Home equity lines of credit
- Credit card products

A category of contracts that cannot take advantage of the flexibility provided by the final rule to replace a LIBOR index before it becomes unavailable **was the subject of a letter** sent by the American Bankers Association and a diverse coalition of other trade groups to House leadership. The letter describes such contracts as “hard to modify financial contracts, securities, and loans that use LIBOR—known as ‘tough legacy’ contracts—that are unable, before [June 2023], to either convert to a non-LIBOR rate or amend the contracts to add adequate fallback language to another rate.” To address this problem, the trade groups urge passage of H.R. 4616, the “Adjustable Interest Rate (LIBOR) Act.” They assert that the legislation is needed to avoid “years of uncertainty, litigation, and a change in value” for investors, consumers, and issuers of securities that would “create ambiguity [and] lead to a reduction in liquidity and volatility.” According to the trade groups, H.R. 4616 would offer uniform, equitable treatment for all contracts covered by the bill and create a safe harbor from litigation.