

Federal Reserve Board adopts final rule implementing Adjustable Interest Rate (LIBOR) Act

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Today the Federal Reserve Board (the Board) adopted its final rule implementing the LIBOR Act. The final rule establishes SOFR-based Board selected benchmark replacements for so called “tough legacy contracts,” which are contracts governed by U.S. law that reference U.S. dollar LIBOR and that do not provide for a clearly defined and practicable replacement benchmark rate after June 30, 2023.

As discussed in our [March 16, 2022 client update](#), Congress enacted the LIBOR Act with the goal of establishing a clear and uniform nationwide process for replacing LIBOR in so called “tough legacy contracts,” the terms of which do not provide for the use of a clearly defined or practicable replacement benchmark rate.

The Board’s final rule is substantially similar to its proposed rule, with clarifying changes made in response to public comments. It will be effective 30 days after publication in the Federal Register and can be found [here](#).

The Board has selected benchmark replacements for two buckets of contracts subject to the LIBOR Act. Consistent with the LIBOR Act, each Board selected benchmark replacement is (i) based upon SOFR and (ii) incorporates spread adjustments for each specified tenor of LIBOR.

- For contracts classified as *derivative transactions*, the Board has selected the ISDA 2020 IBOR Fallbacks Protocol, consisting of (i) SOFR compounded in arrears for the appropriate tenor plus (ii) a stated spread adjustment based on the appropriate tenor.
- For contracts classified as *cash transactions*, the Board has determined that the fallback for consumer loans will be the sum of (i) CME Term SOFR and (ii) the transition tenor spread adjustment (for the one-year period beginning on June 30, 2023) or the tenor spread adjustment specified in the LIBOR Act thereafter. Other SOFR based fallbacks are established for cash transactions involving certain entities regulated by the Federal Housing Finance Agency.

The Board also acknowledged comments relating to its discussion in the proposing release of the effect of the potential publication of “synthetic LIBOR” after June 30, 2023. In the proposing release, the Board requested comments on “how synthetic LIBOR might affect LIBOR contracts that contain fallback provisions that either identify a clear and practicable benchmark replacement or authorize a person to select a benchmark replacement, but where these fallback provisions are triggered only where LIBOR is unavailable (and are not expressly triggered where a benchmark called ‘LIBOR’ is available but is not representative of the market that LIBOR is intended to measure).” However, in the final rule, the Board also affirmed that LIBOR contracts containing fallback provisions that identify a benchmark replacement, such as the prime rate, are unambiguously outside of the scope of the LIBOR Act. The Board also confirmed that in the case of LIBOR contracts including fallback provisions authorizing a determining person to select a benchmark replacement and where that determining person does not select a benchmark replacement by June 30, 2023, the applicable Board-selected benchmark replacement will be the benchmark replacement for that LIBOR contract, notwithstanding the publication of a synthetic LIBOR rate.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Vanessa L. Jackson

+1 212 450 4599
vanessa.jackson@davispolk.com

Michael Moldowan

+1 212 450 4013
michael.moldowan@davispolk.com

Gabriel D. Rosenberg

+1 212 450 4537
gabriel.rosenberg@davispolk.com

Christopher S. Schell

+1 212 450 4011
christopher.schell@davispolk.com

Shane Tintle

+1 212 450 4526
shane.tintle@davispolk.com

Vidal Vanhoof

+1 212 450 4237
vidal.vanhoof@davispolk.com

Yan Zhang

+1 212 450 4463
yan.zhang@davispolk.com

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