



The LIBOR is Ending: What Consumer Advocates Should Know

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Introduction

The LIBOR is a benchmark index,¹ also known as a reference rate, that is commonly used in millions of adjustable rate mortgages, Home Equity Line of Credit (HELOCs), and student loans. Although it is still widely used, the index will no longer be available after June 30, 2023.² That means creditors and servicers will need to find and implement a replacement index for every contract still using the LIBOR at that time. This change should not require consumers to take any action. But they will be notified of the change, and they should be alert for potential errors.

This article describes the issues facing consumers and industry as well as recent legislative and regulatory changes adopted to prepare for the end of the LIBOR.

Background

The LIBOR (originally an acronym for London Interbank Offered Rate) was invented in the late 1960s as a way to price a risky, multi-bank loan to the nation of Iran.³ By the 1990s, it had spread across financial markets and was used to set rates on a diverse range of transactions, from simple home mortgages to Eurodollar futures and complex derivatives. The first residential mortgages using the LIBOR were issued around 1988.⁴

The LIBOR is intended to measure the rate that banks expect to pay in the future for unsecured loans for different periods of time. These periods are called the “tenor” or “term” and range from overnight to one year.⁵ The rate for each tenor is calculated by an administrator in London and is based on submissions from a panel of contributing banks. But the number of actual transactions underlying those submissions is surprisingly small, especially given the tremendous number of transactions relying on the LIBOR. As a result, submissions are sometimes based on expert judgment, rather than actual transactions.⁶ During one week in April 2018, at least three-fifths of U.S. Dollar LIBOR submissions were based on such judgment.⁷ This weakness, among others, contributed to a rate-fixing scandal in the first decade of the 2000s.⁸ Regulators demanded reforms,⁹ and a movement began to find something better.¹⁰

Nevertheless, the financial world was ill-prepared for the 2017 announcement¹¹ that the LIBOR could come to an end in 2021 (later extended to 2023¹²). While most adjustable-rate contracts include terms allowing the note holder to replace the index if it becomes unavailable, these terms—known as “fallback language”—were poorly drafted. Most fallback language provides minimal guidance on how to select a replacement index and instead gives broad, and in some cases unlimited, discretion to the note holder. In some contracts—such as closed-end home mortgages—the fallback language does not allow adjusting other relevant parts of the contract, such as the margin added to the index to obtain the applicable interest rate. And for some corporate contracts, the specified mechanism for replacing the index was entirely impractical.

These defects are important because there is no clear answer to the single biggest question raised by the end of the LIBOR: what to replace it with. There is no other index that offers a

precise replacement in terms of value and movement. All possible alternatives are calculated from different underlying components and, as a result, behave differently than the LIBOR. They are more or less volatile, have a higher or lower historical average value, behave differently under certain market conditions, or differ in some other notable way.

For borrowers, these differences would manifest themselves as loan payments that average higher or lower than they had been with the LIBOR. Payment amounts might also change more significantly and unpredictably. The differences also pose problems for investors. Lower payments for borrowers, higher default rates, or faster pre-payment rates (due to borrowers refinancing to get away from the replacement index) may mean less income for investors.

As a result, no matter which replacement index note holders choose, someone is going to be unhappy with the result. So, while the broad discretion given note holders was probably originally believed by drafters to be a benefit, the industry now recognizes that discretion to be a significant liability and source of litigation risk. And that risk is believed to be a major reason that, so far, nobody has announced a replacement index for their existing (also known as “legacy”) LIBOR contracts.

Consumers face other risks too. A note holder or servicer might use the end of LIBOR as a chance to squeeze something extra out of consumers by making other contract changes under the guise of implementing the new index. There is also the risk of ministerial errors in the process of updating complex servicing platforms that are not designed to handle index replacements.

Wall Street’s Response: The ARRC Recommends the SOFR

A few years after the rate fixing scandal, the New York Federal Reserve Bank (NY Fed), federal regulators, and members of the finance industry convened a group dubbed the Alternative Reference Rate Committee (ARRC) and charged it with developing recommendations for replacing the LIBOR.¹³ Ultimately, after many years of discussion, including consultation with NCLC and other consumer advocates, the ARRC recommended the Secured Overnight Financing Rate (SOFR) as its preferred alternative to the LIBOR in new contracts.¹⁴

The SOFR is considered a risk-free benchmark rate and “is a broad measure of the cost of borrowing cash overnight collateralized by Treasury securities.”¹⁵ It is published by the NY Fed.¹⁶ It was selected for variety of technical reasons beyond the scope of this article. But the ARRC has summarized its reasons by emphasizing that the SOFR is “deep, broad, and diverse enough that it does not dry up in times of market stress; resilient even as markets evolve over time; and entirely transaction-based, so it cannot easily be manipulated.”¹⁷

There are many important differences between the SOFR and LIBOR as benchmarks, but, in practice, two are particularly relevant for consumer contracts, especially legacy contracts. One is that, as a risk-free rate, the SOFR averages lower than the LIBOR. This is most relevant for existing LIBOR contracts that will need to switch to a new index, because it means the margin specified in the contract will be too low to maintain the note holder’s expected return. For example, if the last 6-month LIBOR value is 1.85% and the borrower’s note specifies a margin of 2%, the contract interest rate would be 3.85%. But if the 6-month SOFR value is 1.4%, switching to the SOFR would give the borrower a .4% rate decrease even if market rates remained constant. Another difference is that the SOFR is an overnight rate, while the LIBOR has long been available as multiple forward term rates, such as the commonly used 6-month and 12-month LIBOR term rates.¹⁸ Term SOFR rates are available, but they are not as robust as the overnight SOFR and have a shorter track record.¹⁹ The ARRC has addressed these issues in its recommendations, as discussed below.

Replacing LIBOR term rates in legacy contracts requires addressing both of these differences. Recognizing that an overnight or average rate may be inappropriate or too difficult to adopt for legacy contracts, and that the rates on consumer contracts must be set in advance,²⁰ the ARRC has recommended the SOFR term rates produced by a benchmark administrator appointed in May 2021.²¹ The CME Group, which operates the Chicago Mercantile Exchange and other derivatives markets,²² describes its SOFR rates as “provid[ing] an indication of the forward-looking measurement of overnight SOFR, based on market expectations implied from derivatives markets.”²³ The ARRC currently recommends CME’s one-, three-, and six-month term rates as appropriate replacements for the equivalent term LIBOR rates in legacy contracts.²⁴ While CME also produces a 12-month SOFR term rate, the ARRC and CFPB are still evaluating it.²⁵

To address the difference in value between the LIBOR and SOFR, the ARRC has further recommended—and Congress has codified (as explained in the next section)—a series of tenor spread adjustments.²⁶ These are to be added to the SOFR term rate, resulting in what is known as a spread-adjusted SOFR. The spread-adjusted term SOFR rates will be as close to an exact replacement for the outgoing LIBOR term rates as will be possible. They will be published by another administrator, Refinitiv, which describes them as “seek[ing] to be commercially substantially equivalent to USD LIBOR by capturing both a risk-free rate, which is measured by different forms of Secured Overnight Financing Rate (SOFR), plus a fixed spread adjustment that measures the average difference between USD LIBOR and SOFR.”²⁷

The spread-adjusted SOFR is most relevant to closed-end consumer mortgages. While creditors for most open-end contracts already have authority—by contract or regulation—to adjust the margin when changing the index, there is no way to change the margin in the typical closed-end mortgage contract.

For new contracts, the ARRC recommends using an average of the overnight SOFR. For example, for mortgages, the ARRC recommends the 30- or 90-day average SOFR with a six-month reset period, instead of the currently common one-year LIBOR.²⁸ Both Freddie Mac and Fannie Mae have followed this advice, adopting the 30-day Average SOFR for their new uniform 6-month ARM notes.²⁹ That means ARMs adjusting every 6-months will become the standard, replacing the 12-month ARM.

NCLC and other consumer advocates agree with the ARRC’s recommendations and support use of the SOFR.³⁰ A more detailed explanation of what the SOFR is and of why it is the best replacement is beyond the scope of this article, but more information is available from the NY Fed’s website.³¹ The Consumer Financial Protection Bureau’s (CFPB) position regarding the SOFR is explained in the Federal Register notice announcing the final rule.³²

For reference, these are the ARRC recommendations most relevant to consumer contracts:

- June 22, 2017: the ARRC announced “a broad Treasuries repo financing rate, which the Federal Reserve Bank of New York has proposed publishing”³³ It is not clear when this “broad rate” was identified as, or named, the “SOFR,” but it was more specifically identified in a November 2017 presentation to the ARRC.³⁴
- July 29, 2021: the ARRC formally recommended the CME Group’s SOFR term rates.³⁵
- October 6, 2021: the ARRC issue a summary of its recommendations for using the spread-adjusted rates.³⁶

Congress and Regulators Finally Act

After several years of hoping industry would handle the LIBOR transition without government involvement, it eventually became apparent that government intervention was needed. As a result, in recent years, federal regulators began to issue guidance regarding the LIBOR transition,³⁷ and multiple states passed legislation to address so-called “tough legacy” contracts.³⁸ Eventually, in 2022, Congress passed widely supported legislation addressing the transition, preempting all related state laws.³⁹ While most of the new measures only affect corporate contracts, there are two that will affect consumers:

- The federal Adjustable Interest Rate (LIBOR) Act;⁴⁰ and
- The Consumer Financial Protection Bureau’s LIBOR amendments to the Truth in Lending Act’s Regulation Z.⁴¹

Both of these measures are described in this article.

Adjustable Interest Rate (LIBOR) Act

On March 15, 2022, the President signed the Adjustable Interest Rate (LIBOR) Act (hereinafter “LIBOR Act”) into law, as part of the 2022 Consolidated Appropriations Act.⁴² The LIBOR Act addresses many issues related to the end of the LIBOR. But for consumers, the most relevant one is a safe harbor for note holders⁴³ that adopt the ARRC-recommended SOFR as a replacement index.

The law also makes changes to the Higher Education Act of 1965.⁴⁴ The HEA changes address how the end of the LIBOR will affect the calculation of special allowance payments to companies making certain student loans. Current student borrowers will not see much impact from this change, so that topic is beyond the scope of this article. But additional, albeit somewhat dated, background information is available in white papers from the Structured Finance Association and the Government Accountability Office.⁴⁵

New Safe Harbor for Note Holders Adopting the SOFR

Section 105 of the LIBOR Act creates a safe harbor that broadly eliminates any liability for choosing or implementing the spread-adjusted SOFR as a replacement index. But nothing in the Act requires a decisionmaker to adopt the SOFR. While there are provisions mandating use of the SOFR in contracts that do not authorize a replacement for the LIBOR, a consumer contract lacking such language would be extremely unusual.

When reading the Act, it is important to remember that the ARRC’s recommendations are *voluntary*. Consumer advocates encouraged Congress to mandate the SOFR as a replacement index.⁴⁶ But supporters of other benchmark indices opposed that approach.⁴⁷ As a result, the LIBOR Act preserves the note holder’s right to choose any replacement index⁴⁸ and, instead, creates a safe harbor as an incentive to use the SOFR.

The safe harbor has many parts designed to account for the varying terminology in legacy contracts. But, when applied to consumer contracts, it is fairly narrow. In summary, the safe harbor declares that the spread-adjusted SOFR is an acceptable replacement under the most common variations of fallback language and declares that nobody may be sued for the selection or use of the SOFR as a replacement index. It also forbids suit for implementing so-called “conforming changes,” which are other contract changes needed to make the SOFR fit into a contract. For consumer contracts, the Federal Reserve Board will issue rules setting forth what

conforming changes will be covered by the safe harbor. For non-consumer contracts, the safe harbor also covers “the determination” of what conforming changes are needed.

More specifically, under the safe harbor, a replacement index based on the SOFR, “the selection or use of” such an index, and “any benchmark replacement conforming changes” are deemed:

- “a commercially reasonable replacement for and a commercially substantial equivalent to LIBOR;”
- “a reasonable, comparable, or analogous rate, index, or term for LIBOR;”
- “a replacement that is based on a methodology or information that is similar or comparable to LIBOR;”
- “substantial performance by any person of any right or obligation relating to or based on LIBOR; and”
- “a replacement that has historical fluctuations that are substantially similar to those of LIBOR for purposes of the Truth in Lending Act”⁴⁹

They are deemed to not:

- discharge or excuse performance under any LIBOR contract;
- constitute force majeure; or
- constitute a breach or void any LIBOR contract.⁵⁰

Most significantly—

“No person shall be subject to any claim or cause of action in law or equity or request for equitable relief, or have liability for damages, arising out of—

- (1) the selection or use of a Board-selected benchmark replacement;
- (2) the implementation of benchmark replacement conforming changes; or
- (3) with respect to a LIBOR contract that is not a consumer loan, the determination of benchmark replacement conforming changes.”⁵¹

“Benchmark replacement conforming changes” has two definitions. For consumer contracts, they are “any technical, administrative, or operational changes, alterations, or modifications” that the Board determines will affect the “implementation, administration, and calculation of the Board-selected benchmark replacement in LIBOR contracts”⁵² For non-consumer contracts, a private actor, such as a servicer, will make that determination “after giving due consideration to” changes identified by the Board.⁵³

There will likely be very few conforming changes needed in consumer contracts. An example of what might be permitted is changing the contractually designated day of the month on which the current index value is identified, if the SOFR is not available on the date originally specified in the contract.

Although the Act is based on the ARRC’s recommendations, its reference to the SOFR is byzantine. The Act instead uses the defined term Board-selected benchmark replacement—“a benchmark replacement identified by the [Federal Reserve] Board that is based on SOFR, including any tenor spread adjustment pursuant to section 104(e).”⁵⁴ Subsection (e) then directs the Board to “adjust the Board-selected benchmark replacement for each category of LIBOR contract that the Board may identify to include the relevant tenor spread adjustment.” The term “tenor spread adjustment” is defined with a list of specific percentage values ranging from 0.00644 percent for the overnight LIBOR to 0.71513 percent for the 12-month LIBOR.⁵⁵

Because the Act requires the tenor adjustments to be added to the last LIBOR values,⁵⁶ there will be no official spread-adjusted rate until June 30, 2023. In the meantime, indicative rates⁵⁷ are available from the benchmark administrator.⁵⁸ The indicative rates use the historical average difference between the SOFR and LIBOR, rather than the tenor spread adjustments specified in the LIBOR Act.⁵⁹ So they only provide a rough estimate of what the spread-adjusted SOFR value would be. The official SOFR values will eventually be published on a freely accessible website.⁶⁰ The 30-, 90-, and 180-day SOFR averages that the ARRC recommends for new contracts are available for free on the NY Fed’s website.⁶¹ This is an improvement over the LIBOR, which usually requires a subscription to *The Wall Street Journal*.

Consumer Rights Preserved

The Act clearly preserves consumer protections in a number of ways. Note holders will not be permitted to change a consumer’s rights or the cost of a contract under the guise of making “conforming changes” or by picking an inappropriate replacement index. Consumers will retain the right to sue if harmed by those actions or for corrections and damages needed when a servicer makes mistakes.

Section 104(f)(6) broadly preserves “the rights or obligations of any person, or the authorities of any agency, under Federal consumer financial law,”⁶² with the notable exception of the safe harbor in section 105(c). Another paragraph more specifically preserves Federal consumer financial laws requiring creditors to send change-in-terms notices to borrowers and regarding the re-evaluation of credit card rate increases.⁶³

The Act also states that it does not affect “any cap, floor, modifier, or spread adjustment to which LIBOR had been subject” under existing contract language. The term “spread adjustment” likely refers to the margin used to calculate the rate on adjustable-rate contracts. This paragraph should be interpreted to mean the listed contract terms cannot be changed when implementing the SOFR unless changes are specifically authorized elsewhere—such as by the contract at issue, another law or regulation, or the pending definition of “conforming changes” to be issued by the Board.⁶⁴

The CFPB Amends Regulation Z.

Overview

The other major legal development in the transition away from the LIBOR is the CFPB’s final rule amending Regulation Z (12 C.F.R. Part 1026). The Truth in Lending Act is the primary federal statute regulating consumer credit in the United States, and it is implemented through Regulation Z. On December 8, 2021, the Bureau issued a final rule amending Regulation Z to account for the end of the LIBOR.

The primary changes made are:

- authorizing open-end creditors to replace the LIBOR before June 30, 2023;
- addressing complications of the transition related to rate change notices and the re-evaluation of rate increases for credit cards;
- officially stating that the SOFR and prime rate are acceptable replacements for the LIBOR, and providing guidance on selecting other indices;

- extensive new commentary related to these issues;
- replacing the word “LIBOR” with “SOFR” throughout the rule, model forms, and commentary.

Before the recent amendment, Regulation Z already envisioned some changes related to replacing a defunct index in adjustable-rate contracts. In the pre-amendment version of the rule, section 1026.40(f)(3) prohibited changing most contract terms in a HELOC, but allowed creditors to change the index and margin if the original index was no longer available.⁶⁵ And the commentary to section 1026.20, regarding post-consummation disclosures, said replacing the index is not considered refinancing a transaction and does not require the creditor to re-issue the disclosures required when consummating a refinancing.⁶⁶ Both provisions remain the same but have been expanded upon. The rules for credit cards did not have any equivalent provisions and many other questions were left unanswered. Both omissions have been addressed in the amended rule.

As amended, creditors are clearly authorized to replace the LIBOR in all forms of open-end credit. The authorization for closed-end credit remains somewhat oblique,⁶⁷ but most of the regulation and commentary make clear that replacement is permitted if the contract at issue authorizes such a change. (And we are unaware of any consumer mortgages that do not authorize such change.) As amended, a replacement index must meet several criteria:

- it must have historical fluctuations substantially similar to that of the original index. This does not apply to new indices lacking a rate history.⁶⁸
- the replacement index plus the replacement margin must result in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable.⁶⁹

For HELOCs and closed-end mortgages, the amendment states that additional factors may be relevant depending on which LIBOR tenor and which replacement index are being considered. Examples include whether:⁷⁰

- the replacement index is a backward-looking rate (e.g., historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced.
- the movements over time are comparable;
- the consumers’ payments using the replacement index compared to payments using the LIBOR index are comparable if there is sufficient data for this analysis;
- the index levels are comparable;
- the replacement index is publicly available; and
- the replacement index is outside the control of the creditor.

The rule does not define “substantially similar” or “comparable.”

Open-end Credit

For credit cards and open-end credit plans secured by the consumer's dwelling (i.e., HELOCs) that use the LIBOR, the amendment allows creditors to replace both the index and the margin on or after April 1, 2022.⁷¹ This is important because, without this change, creditors would be required to wait until the actual end of the LIBOR triggered the contractual and older regulatory authority to replace the index. With the amendment, creditors can phase-in the change across their product line and will have more control over the transition timing. Even if creditors choose to wait until June 2023, this rule change will allow them to notify consumers in advance.

The ability to change the *margin* is important because it allows open-end creditors to compensate for the difference between the average historical value of the LIBOR and the replacement index. In the language of the amended rule, the resulting new interest rate should be “substantially similar” to the last rate under the LIBOR. Unfortunately, there is no definition of “substantially similar” in TILA, Regulation Z, or elsewhere. If the creditor adopts the spread-adjusted SOFR (in order to get the safe harbor), however, there will be no reason to change the margin.

When evaluating whether the sum of the replacement index plus the replacement margin are substantially similar to the result of the LIBOR plus the old margin, creditors are to use the index values in effect on October 18, 2021 as the comparison point. However, if the creditor replaces the LIBOR with the spread-adjusted SOFR index recommended by the ARRC, the comparison point is the index value on June 30, 2023, for the LIBOR, and value of the SOFR on the first date it is published.⁷²

According to the Official Interpretations in the final rule, the Bureau has determined that the prime rate published in *The Wall Street Journal* has historical fluctuations that are substantially similar to the 1-month and 3-month LIBOR, and that the ARRC-recommended spread-adjusted SOFR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, and 6-month LIBOR indices they are intended to replace.⁷³ The Bureau decided against including references to the 1-year USD LIBOR and its replacement in various comments until it obtains additional information.⁷⁴

Creditors are allowed to replace the LIBOR with a suitable new index even if it results in an interest-rate increase.⁷⁵ This may be the case with the spread-adjusted SOFR. But there should be no initial increase if another replacement index is used because a new margin can be calculated to achieve the same total rate (new index + new margin) as before the replacement. Therefore, there would be no justification for an increase. This is illustrated in new commentary to section 1026.40(f), regarding HELOCs. There, the Bureau includes an example: Assume that when the LIBOR becomes unavailable, the LIBOR value for a HELOC is 2% and the contract specifies a margin of 10%. If the creditor selects *The Wall Street Journal* prime index as a replacement, and its value is 5% at that time, the creditor would need to select a new margin of 7% to satisfy the requirement to produce a substantially similar annual percentage rate.⁷⁶ The new margin would be permanently fixed.

While open-end creditors are allowed to change the index before June 2023, creditors opting to use the spread-adjusted SOFR will—as a practical matter—not be able to do so before then. That is because the official spread-adjusted rates will not be available until then, as explained above, in the section on the LIBOR Act. Creditors can, and should, still notify consumers in advance that the index and rate will be changed. But the unavailability of the official rate creates a problem: how can they notify consumers of the new rate when they don’t know what it is?

The amended commentary addresses this by adding an exception to the rate disclosure requirement for HELOC creditors. When notifying consumers of the index and rate change, they will be allowed to make the disclosure “based on the best information reasonably available, clearly stating that the disclosure is an estimate.”⁷⁷ They will probably use an indicative rate based on the latest SOFR rate plus the codified tenor spread, as explained above.

When replacing the LIBOR, the creditor must notify the consumer of the new index and margin, regardless of whether the change increases or decreases the APR (or leaves it unchanged).⁷⁸ This is an exception to the usual rule that changes resulting in a decrease in cost do not require notice.⁷⁹ Strangely, this exception is limited to replacing the LIBOR. It does not apply to replacing any other index.

Another amendment addresses the re-evaluation of credit card interest rate increases. Normally, when a card issuer increases a consumer's interest rate, the issuer generally must re-evaluate the rate increase every six months until the rate is reduced by a certain degree. As amended, effective April 1st, and only for LIBOR contracts, if the card issuer previously raised the APR, the issuer will no longer be required to review factors involved in the increase if the new APR under the new index and margin is less than it was based on the old LIBOR formula. The old and new values are to be compared as of October 18, 2021. The amended rule is less than clear but commentary is very helpful.⁸⁰ The issuer also will not be required to conduct a re-evaluation if the increase is due to the transition from LIBOR to new index and the new index meets the "substantially similar" requirements described above.⁸¹

Closed-end credit

One important question for closed-end credit (primarily mortgages) is whether replacing the index will constitute refinancing the transaction, which would require re-disclosure of the information provided at consummation. The existing commentary regarding disclosure after post-consummation events already states that replacing an index is not the addition of a variable rate feature that would trigger the duty to make new disclosures. The amendments add an example specifically stating that replacing the LIBOR with the spread-adjusted SOFR is not a refinancing because the replacement index is comparable to the old index.⁸² Unstated but apparent is that a creditor *will* have to issue new disclosures if using a replacement index that is not comparable to the LIBOR being replaced. Failure to do so will violate TILA.

Practice Tips

Most major creditors are expected to notify consumers that the LIBOR change is coming. But they are not required to give consumers any say in the replacement of the LIBOR or any of the related changes. Consumers should, nevertheless, read all correspondence from their creditor and monitor their monthly statements for any problems. If a creditor chooses a replacement that complies with the criteria described above, a consumer's only choice will be to continue making payments on the contract or to close the account (such as by refinancing). But, if the monthly payments appear to change radically or if there are any other problems related to the transition, the consumer may have a cause of action.

The first step in evaluating any potential claim will be to determine whether the creditor adopted the appropriate prime rate or SOFR as a replacement. If not, the consumer may have a claim for violation of TILA and breach of contract. Otherwise, the newly enacted safe harbor may preclude claims based solely on the choice of index. The Federal Reserve Board rule on benchmark replacement conforming changes will list other changes covered by the safe harbor. If a change is not covered by the safe harbor, it will be necessary to analyze the degree of harm and whether it is still permitted under the general guidelines provided in the contract and Regulation Z.

The safe harbor does not affect claims related to servicer errors. Consumers should contact their loan servicer (in writing) about any errors. The Real Estate Settlement Procedures Act and Regulation X has procedures for addressing errors. These are discussed in section 3.3 of NCLC's *Mortgage Servicing and Loan Modifications*.⁸³ In particular, it is important to use the address for errors specified on the consumer's statement.⁸⁴ Open-end consumers should follow the error correction procedures in the Fair Credit Billing Act, as described in section 7.9 of NCLC's *Truth in Lending*.⁸⁵

Further Reading and Resources

Organizational LIBOR Home Pages

- [Alternative Reference Rate Committee home page](#)
 - ARRC, [An Updated User's Guide to SOFR](#) (Feb. 2021)
- [ICE Benchmark Administration's LIBOR resource page](#)
- [Mortgage Bankers Association LIBOR resources](#)

NCLC Materials

- [Group Letter](#) supporting the Economic Continuity and Stability Act, March 2, 2022
- [Comments](#) to HUD re: 86 Fed. Register 54,876 and the end of LIBOR, December 6, 2021
- [Testimony](#) of Andrew Pizor on Protecting Consumers and Investors during the LIBOR Transition, November 2, 2021. [Follow-Up Questions](#).
- Issue Brief: [The End of Libor: Risk and Solutions for Residential Mortgages](#), February 2020
- [Group comments](#) to the Alternative Reference Rates Committee recommending stronger action to prepare for the December 2021 end of the LIBOR index (a commonly used interest rate index in mortgages and student loans), May 29, 2020
- [NCLC Comments](#) on CFPB LIBOR NPR (85 FR 36938 (6-18-2020, filed 8-4-2020))

Federal Agency Guidance (where an agency has centralized its LIBOR-related guidance, only that page is provided)

Joint and FFIEC

- LIBOR Transition: Joint Statement on Managing the LIBOR Transition (Oct. 20, 2021) (OCC Bulletin 2021-48, FRB SR 21-17, 21-CU-10, FIL-70-2021)
- FFIEC, [Joint Statement on Managing the LIBOR Transition](#) (OCC Bulletin 2020-68, FRB SR 20-17, FDIC FIL-68-2020) (July 1, 2020)
- FDIC, FRB, OCC, Interagency Statement on Reference Rates for Loans (FRB SR 20-25, OCC Bulletin 2020-98, FIL-104-2020) (Nov. 6, 2020)
- FDIC, FRB, OCC, Statement on LIBOR Transition (FDIC PR-129-2020, OCC Bulletin 2020-104, FRB SR 20-27) (Nov. 30, 2020)

Federal Reserve Board

- [LIBOR transition compilation](#)

NCUA

- NCUA, Evaluating LIBOR Transition Plans (SL No. 21-01, May 2021)
- NCUA, 2020 Supervisory Priorities (20-CU-01, Jan. 2020)

OCC

- OCC Semiannual Risk Perspective at 17 (Fall 2019)
- OCC Semiannual Risk Perspective at 5 (Fall 2018)
- OCC, LIBOR Transition: Updated Self-Assessment Tool for Banks (OCC Bulletin 2021-46, Oct. 18, 2021)

FDIC

- FDIC Banker Resource Center, [London Interbank Offered Rate \(LIBOR\) Transition](#)

CFPB

- CFPB, [LIBOR Index Transition resources](#)
- CFPB, [LIBOR Transition FAQs](#)
- CFPB, Facilitating the LIBOR Transition (Regulation Z), 85 Fed. Reg. 36938 (June 18, 2020) (notice of proposed rulemaking)
- CFPB, Facilitating the LIBOR Transition (Regulation Z), 86 Fed. Reg. 69716 (Dec. 8, 2021) (final rule)

Housing Agencies

- [FHFA](#)
- [Fannie Mae](#)
- [Freddie Mac](#)
- VA, Index for Adjustable-Rate Mortgage (ARM) (Circular 26-20-20, June 1, 2020)
- HUD/FHA
 - HUD, Adjustable Rate Mortgages: Transitioning From LIBOR to Alternate Indices, 86 Fed. Reg. 54876 (Oct. 5, 2021) (advance notice of proposed rulemaking)
 - HUD, 30-Day Notice of Proposed Information Collection: Home Equity Conversion Mortgage (HECM) Insurance Application for the Origination of Reverse Mortgages and Related Documents, 86 Fed. Reg. 6915 (Jan. 25, 2021) (requesting OMB approval of new forms including revised model HECM Adjustable Rate Note "to align with FHA's transition from the [LIBOR] index to the [SOFR] index")

New York Division of Financial Services

- Industry Letter: Request for Assurance of Preparedness for LIBOR Transition (Dec. 23, 2019)

The Rates

- [LIBOR](#) (WSJ)
- [Term SOFR values](#) (CME)
- [Spread-adjusted SOFR values](#) (Refinitiv)

Further Reading

- Congressional Research Service, [The LIBOR Transition](#), Rpt. No. IF11315 (updated March 21, 2022)
- David Hou and David Skeie, [LIBOR: Origins, Economics, Crisis, Scandal, and Reform](#), Federal Reserve Bank of New York Staff Report No. 667 (March 2014)
- Jacob Rank-Broadley, Refinitiv, [Transitioning from LIBOR: Explaining the cash fallback rates](#) (Aug. 11, 2021)

Endnotes

¹ Actually, it's a group of indices—there were 35 individual LIBOR rates until December 2021—but most people just refer to “the LIBOR” unless they need to be more specific. See ICE Benchmark Admin., [LIBOR: Introduction](#), (archived Apr. 23, 2022).

² U.K. Fin. Conduct Auth., [FCA announcement on future cessation and loss of representativeness of the LIBOR benchmarks](#), at ¶¶ 3, 8 (Mar. 5, 2021), (announcing publication of overnight and 12-month US dollar LIBOR will cease after June 30, 2023 and the 1-month, 3-month and 6-month US dollar LIBORs will no longer be representative).

³ 86 Fed. Reg. 69,716, 69,718 (Dec. 8, 2021); Gavin Finch & Liam Vaughan, [The Man Who Invented the World's Most Important Number](#), Bloomberg Markets (Nov. 29, 2016).

⁴ See George Anders, *U.S. Lenders Tie Mortgages To London Interbank Rate*, Wall St. J., Aug. 3, 1988, at 21 (ProQuest Historical Newspapers).

⁵ Some of these rates are no longer available.

⁶ See ICE Benchmark Admin., [USD LIBOR Methodology](#).

⁷ Erik Heitfield & Yang-Ho Park, Fed. Rsv. Bd., [Inferring Term Rates from SOFR Futures Prices 2019-014](#), at 2 (Feb. 5, 2019).

⁸ See, e.g., Press Release, U.K. Fin. Conduct Auth., [Barclays fined £59.5 million for significant failings in relation to LIBOR and EURIBOR](#) (June 27, 2012); Press Release, U.K. Fin. Conduct Auth., [UBS fined £160 million for significant failings in relation to LIBOR and EURIBOR](#) (Dec. 19, 2012); Press Release, U.K. Fin. Conduct Auth., [RBS fined £87.5 million for significant failings in relation to LIBOR](#) (Feb. 6, 2013).

⁹ See generally U.K. Treasury, [The Wheatley Review of LIBOR: Final Report](#) (Sept. 2012).

¹⁰ Alt. Reference Rates Comm. (ARRC), [Minutes for the December 12, 2014 Organizational Meeting](#).

¹¹ Andrew Bailey, Chief Exec. of U.K. FSA, Speech at Bloomberg London: [The Future of LIBOR](#) (July 27, 2017), (stating that current bank panel has “agree[d] voluntarily to sustain LIBOR for a four to five year period, i.e. until end-2021”).

¹² U.K. Fin. Conduct Auth., [FCA announcement on future cessation and loss of representativeness of the LIBOR benchmarks](#), at ¶¶ 3, 8 (Mar. 5, 2021), (announcing publication of overnight and 12-month US dollar LIBOR will cease after June 30, 2023 and the 1-month, 3-month and 6-month US dollar LIBORs will no longer be representative).

¹³ See Press Release, Fed. Rsv. Bd., [Federal Reserve Board announces meeting with market participants on reference rate reform](#) (Nov. 17, 2014). The name first appears in the ARRC's records on the agenda for the second meeting. Alt. Reference Rates Comm. (ARRC), [Agenda for the December 12, 2014 Organizational Meeting](#).

¹⁴ Press Release, Alt. Reference Rates Comm. (ARRC), [The ARRC Selects a Broad Repo Rate as its Preferred Alternative Reference Rate](#) (June 22, 2017).

¹⁵ Fed. Rsv. Bank of N.Y., [Secured Overnight Financing Rate Data](#). See Alt. Reference Rates Comm. (ARRC), [An Updated User's Guide to SOFR](#), at 4 (Feb. 2021).

¹⁶ Fed. Rsv. Bank of N.Y., [Secured Overnight Financing Rate Data](#). See Alt. Reference Rates Comm. (ARRC), [An Updated User's Guide to SOFR](#), at 4 (Feb. 2021).

¹⁷ Alt. Reference Rates Comm. (ARRC), [ARRC Formally Recommends a Forward-Looking SOFR Term Rate](#). See generally Alt. Reference Rates Comm. (ARRC), [Second Report](#), at 7–16 (Mar. 2018), (describing reasons for recommending SOFR and alternatives considered).

¹⁸ Rates can be forward looking—based on what the market anticipates, or in arrears—or they can be based on what actually happened in the past.

¹⁹ See Alt. Reference Rates Comm. (ARRC), [ARRC Best Practice Recommendations Related to Scope of Use of the Term Rate](#) (Aug. 27, 2021), (discussing cautions about using SOFR term rates).

²⁰ Alt. Reference Rates Comm. (ARRC), [Summary of the ARRC’s Fallback Recommendations](#), at 9 (Oct. 6, 2021), (hereinafter “Summary of the AARC’s Fallback Recommendations”).

²¹ Press Release, Alt. Reference Rates Comm. (ARRC), [ARRC Releases Update on its RFP Process for Selecting a Forward-Looking SOFR Term Rate Administrator](#) (May 21, 2021).

²² [CME Group](#), Wikipedia, (last visited May 5, 2022).

²³ CME Group, [CME SOFR Term Rates](#), (last visited May 2, 2022).

²⁴ Summary of the ARRC’s Fallback Recommendations, at 9 (including table showing recommended replacement for the most common LIBOR tenors). See Press Release, Alt. Reference Rates Comm. (ARRC), [ARRC Formally Recommends Term SOFR](#) (July 29, 2021).

²⁵ Summary of the ARRC’s Fallback Recommendations, at 6 (“CME has stated that it also intends to produce a 1-year SOFR term rate, but the ARRC will need to evaluate this rate separately before deciding whether to recommend it.”); 86 Fed. Reg. 69,716, 69,723 (Dec. 8, 2021) (“The Bureau is reserving judgment about whether to include a reference to the 1-year USD LIBOR index in comment 9(c)(1)-4 until it obtains additional information. Once the Bureau knows which SOFR-based spread-adjusted index the ARRC will recommend to replace the 1-year USD LIBOR index for consumer products, the Bureau may determine whether the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index.”).

²⁶ Summary of the ARRC’s Fallback Recommendations, at 9–10 (“[F]or consumer legacy contracts, the ARRC recommends that the spread-adjusted CME 1-month, 3-month, and 6-month term SOFR replace the 1-month, 3-month and 6-month LIBOR respectively.”).

²⁷ Refinitiv, [Refinitiv USD IBOR Cash Fallbacks](#), (last visited May 3, 2022).

²⁸ Alt. Reference Rates Comm. (ARRC), [Overview of the ARRC’s Proposed Models of SOFR ARMs](#).

²⁹ Fannie Mae, [Fannie Mae Legal Documents](#), Notes, Standard Adjustable-Rate Notes, Multistate Adjustable-Rate Note–30-Day Average SOFR (3441), at ¶4; Freddie Mac, [2021 Updated Instruments](#), Multistate Adjustable Rate Note 30-day Average SOFR Index (A-LOL) (Form 3441), at ¶4.

³⁰ National Consumer Law Center et al., [Letter to Sen. Schumer and Sen. McConnell Re Support for the Economic Continuity and Stability Act](#) (Mar. 2, 2022).

³¹ See generally Alt. Reference Rates Comm. (ARRC), [An Updated User’s Guide to SOFR](#) (Feb. 2021); Alt. Reference Rates Comm. (ARRC), [Guide to Published SOFR Averages](#).

³² 86 Fed. Reg. 68,716, 69,730–69,731 (Dec. 8, 2021).

³³ Press Release, Alt. Reference Rates Comm. (ARRC), [The ARRC Selects a Broad Repo Rate as its Preferred Alternative Reference Rate](#) (June 22, 2017).

³⁴ Joshua Frost, Fed. Rsv. of N.Y., [Introducing the Secured Overnight Financing Rate \(SOFR\)](#) (Nov. 2, 2017).

³⁵ Press Release, Alt. Reference Rates Comm. (ARRC), [ARRC Formally Recommends Term SOFR](#) (July 29, 2021).

³⁶ Press Release, Alt. Reference Rates Comm. (ARRC), [ARRC Releases Summary of its Spread-Adjusted Fallback Recommendations](#) (Oct. 6, 2021).

³⁷ These are listed in the Resources section at the end of this article.

³⁸ See, e.g., N.Y. Gen. Oblig. Law art. 18-C; Ala. Code tit. 5, ch. 28; 2022 Fla. Laws ch. 57 (to be codified at Fla. Stat. 687.15); S. Bill No. 2133, 112th Gen. Assemb., Reg. Sess. (Tenn. 2022) (to be codified at Tenn. Code Ann. 47-33-101 *et seq.*); S. 371, 122nd Gen. Assemb., Reg. Sess. (Ind. 2022) (to be codified at Ind. Code 38-10-2); Leg. Bill 707, 107th Leg., 2nd Sess. (Neb. 2022).

³⁹ Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, § 107, 136 Stat. 49 (Mar. 15, 2022).

⁴⁰ *Id.* at Div. U, §§ 101–110, 136 Stat. 825–834.

⁴¹ 86 Fed. Reg. 69,716 (Dec. 8, 2021).

⁴² Pub. L. No. 117-103, Div. U, §§ 101–110, 136 Stat. 825–834 (Mar. 15, 2022).

⁴³ The LIBOR Act uses the term “determining person” to describe whoever has authority to select a replacement index for a given contract. Pub. L. No. 117-103, Div. U, § 103(10), 136 Stat. 827. However, this article uses the term “note holder” for simplicity.

⁴⁴ Pub. L. No. 117-103, Div. U, § 109, 136 Stat. 832 (Mar. 15, 2022).

⁴⁵ Structured Fin. Ass’n, [Taking Steps To Protect Student Loan Financing From a Rocky LIBOR Transition](#) (Jan. 13, 2020); U.S. Gov’t Accountability Office, GAO-04-1070, [Federal Family Education Loan Program: Statutory and Regulatory Changes Could Avert Billions in Unnecessary Federal Subsidy Payments](#) (Sept. 20, 2004). See also EveryCRSReport.com, [Economics of Guaranteed Student Loans](#) (Aug. 2008).

⁴⁶ Press Release, National Consumer Law Center, [NCLC’s Pizor Urges Protections for Borrowers With Adjustable Interest Rate Loans in Senate Testimony](#) (Nov. 2, 2021).

⁴⁷ See [Powell: Ameribor ‘Fully Appropriate’ for Banks When It Reflects Cost of Funding](#), ABA Banking J. (June 3, 2020).

⁴⁸ Pub. L. No. 117-103, Div. U, § 106(b)(1), 136 Stat. 830 (Mar. 15, 2022).

⁴⁹ *Id.* at Div. U, § 105(a)(1)–(5), 136 Stat. 830.

⁵⁰ *Id.* at Div. U, § 105(b)(2)(A), (C)–(D), 136 Stat. 830.

⁵¹ *Id.* at Div. U, § 105(c), 136 Stat. 830.

⁵² *Id.* at Div. U, § 103(4), 136 Stat. 826.

⁵³ *Id.*

⁵⁴ *Id.* at Div. U, § 103(6), 136 Stat. 826–827.

⁵⁵ *Id.* at Div. U, § 103(20), 136 Stat. 828.

⁵⁶ *Id.* at Div. U, § 104(e)(1), 136 Stat. 829 (on the LIBOR replacement date, the Board shall adjust the Board-selected benchmark replacement for each category of LIBOR contract that the Board may identify to include the relevant tenor spread adjustment”).

⁵⁷ *Indicative*, Oxford English Dictionary Online (“Designating a price, offer, etc., which is not fixed or unalterable but is usually considered as an indicator of what something may ultimately sell for or be worth.”).

⁵⁸ Refinitiv, [Refinitiv USD IBOR Cash Fallbacks](#). See generally Refinitiv, [Refinitiv Benchmark Services \(UK\) Limited](#), USD IBOR Consumer Cash Fallbacks (1, 3, 6 MONTHS) Prototype (Jan. 3, 2022).

⁵⁹ See Jacob Rank-Broadley, Refinitiv, [Transitioning from LIBOR: Explaining the cash fallback rates](#) (Aug. 11, 2021), (written before the LIBOR Act was passed).

⁶⁰ Press Release, Fed. Rsrv. Bank of N.Y., [ARRC Announces Refinitiv as Publisher of its Spread Adjustment Rates for Cash Products](#) (Mar. 17, 2021).

⁶¹ Fed. Rsrv. Bank of N.Y., [SOFR Averages and Index Data](#).

⁶² Pub. L. No. 117-103, Div. U, § 104(f)(6), 136 Stat. 829, 830 (Mar. 15, 2022) (“as defined in section 1002 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481)).”

⁶³ *Id.* at Div. U, § 104(f)(5), 136 Stat. 829.

⁶⁴ *Id.* at Div. U, § 104(f)(4), 136 Stat. 829.

⁶⁵ 12 C.F.R. § 1026.40(f)(3)(ii).

⁶⁶ 12 C.F.R. pt. 1026, supp. I, § 1026.20(a)-3.ii.B.

⁶⁷ See generally 86 Fed. Reg. 69,716, 69,717–69,718, 69,729–69,730 (Dec. 8, 2021) (discussing changes affecting closed-end credit); 86 Fed. Reg. 69,716, 69,732–69,733 (Dec. 8, 2021) (“It is not necessary or warranted for Regulation Z to address the timing of the transition from using the LIBOR indices for closed-end loans because Regulation Z does not address when a creditor may transition a closed-end loan to a new index. Instead, Regulation Z provides guidance on the circumstances when an index change requires creditors to treat the transaction as a refinancing and, accordingly, to provide the disclosures required at origination.”).

⁶⁸ 12 C.F.R. §§ 1026.40(f)(3), 1026.55(b)(7); 12 C.F.R. pt. 1026, supp. I, § 1026.40(f)(3)(ii)(A).

⁶⁹ *Id.*

⁷⁰ 12 C.F.R. pt. 1026, supp. I, §§ 1026.20(a)-3.iv, 1026.40(f)(3)(ii)(A)-2.iii

⁷¹ Reg. Z §§ 1026.40(f)(3)(ii)(B), 1026.55(b)(7)(i) (as amended).

⁷² *Id.*

⁷³ 12 C.F.R. pt. 1026, supp. I, § 1026.40(f)(3)(ii)(A)-2(i), (ii); 12 C.F.R. pt. 1026, supp. I, § 1026.40(f)(3)(ii)(B)-1(i), (ii); 12 C.F.R. pt. 1026, supp. I, § 1026.55(b)(7)(i)-1(i), (ii); 12 C.F.R. pt. 1026, supp. I, § 1026.55(b)(7)(ii)-1(i), (ii); 86 Fed. Reg. 69,716, 69,717 (Dec. 8, 2021).

⁷⁴ 86 Fed. Reg. 69,716 (Dec. 8, 2021).

⁷⁵ Reg. Z § 1026.55(b) expressly permits an increase.

⁷⁶ 12 C.F.R. pt. 1026, supp. I, § 1026.40(f)(3)(ii)(A)-3.i.

⁷⁷ 12 C.F.R. pt. 1026, supp. I, § 1026.9(c)(1)-4 (as amended).

⁷⁸ Reg. Z § 1026.9(c)(1)(ii), (c)(2)(v)(A) (as amended).

⁷⁹ *Id.* But even under the old rule, changing the index always requires notice, regardless of the impact on the APR, because such a change would qualify as a “significant change in account terms.” National Consumer Law Center, *Truth in Lending* [§ 6.8.4.4.1](#) (10th ed. 2019).

⁸⁰ 12 C.F.R. § 1026.59(f)(3).

⁸¹ Reg. Z. § 1026.59(h)(3). See 86 Fed. Reg. 69,716, 69,717 (Dec. 8, 2021) (discussing this change).

⁸² 12 C.F.R. pt. 1026, supp. I, § 1026.20(a)-3.ii.B.

⁸³ National Consumer Law Center, [Mortgage Servicing and Loan Modifications](#) (2019).

⁸⁴ National Consumer Law Center, *Mortgage Servicing and Loan Modifications* [§ 3.3.6](#) (2019).

⁸⁵ National Consumer Law Center, [Truth in Lending](#) (10th ed. 2019).