

The Current State of the LIBOR Transition: A Mid-Year Overview

August 9, 2021

On March 5, 2021, LIBOR's administrator, ICE Benchmarks Administration (the "IBA"), and LIBOR's regulator, the U.K. Financial Conduct Authority (the "FCA"), announced that LIBOR will no longer be provided (i) for all sterling, euro, Swiss franc and Japanese yen settings, and the one-week and two-month U.S. dollar settings after December 31, 2021 and (ii) for the remaining U.S. dollar settings after June 30, 2023. On March 8, 2021, the Alternative Reference Rates Committee ("ARRC") confirmed that the IBA and FCA announcements constitute a "Benchmark Transition Event" with respect to all U.S. dollar settings under the ARRC recommended fallback language for LIBOR.

While market participants expected LIBOR would not be available beyond 2021, concerns about market readiness for the transition remain. This update briefly discusses key events in the LIBOR transition.

EFFECT OF BENCHMARK TRANSITION EVENT

- Under the ARRC fallback language,¹ the "Benchmark Transition Event" does not require an immediate transition to the benchmark reference rate; the transition date will be December 31, 2021 for one-week and two-month U.S. dollar LIBOR and June 30, 2023 for overnight, one-month, three-month, six-month and 12-month U.S. dollar LIBOR.
- The ARRC fallback language uses the secured overnight financing rate ("SOFR") as the successor rate plus a spread adjustment to minimize the difference with LIBOR. The ICA and FCA announcements crystallized the credit adjustment. For cash products (other than loans to consumer borrowers), the ARRC's recommended spread adjustment will match the value of International Swaps and Derivatives Association, Inc.'s ("ISDA") spread adjustments to U.S. dollar LIBOR.

¹ Please refer to Debevoise In Depth, [Transition from LIBOR—Some Key Considerations](#) for further discussion of ARRC's fallback language.

REGULATORY EXPECTATIONS

- The U.S. federal banking agencies issued [supervisory guidance](#) encouraging banks to stop entering into new contracts that use LIBOR as a reference rate after December 31, 2021.
- In the United Kingdom, the Working Group on Sterling Risk-Free Reference Rates [recommended](#) that beginning the end of March 2021, sterling LIBOR stop being used in any lending or other cash products that mature after the end of 2021. That said, there are limited exceptions for specified transactions. Many expect that the U.S. regulators may take a similar approach as the year-end deadline approaches.

LEGISLATIVE SOLUTIONS

For the majority of contracts, LIBOR should be able to be replaced. However, for so-called “tough legacy” contracts—existing LIBOR contracts that have no or inadequate fallback language and no ability to be amended prior to LIBOR’s cessation—legislative solutions are being requested.

- On March 24, 2021, the New York State Legislature passed legislation adopting ARRC-proposed legislation. The legislation, which applies to contracts governed by New York law, establishes that SOFR is “a commercially reasonable substitute for and commercially substantial equivalent to LIBOR” and offers a safe harbor from litigation for the use of SOFR. The legislation does not mention any non-SOFR alternative rates.
- On July 28, 2021, the House Financial Services Committee passed [H.R. 4616](#), “the Adjustable Interest Rate (LIBOR) Act of 2021,” introduced on July 22, 2021. The proposed bill is substantially similar to the New York legislation.
- Under the IRS’ [Revenue Procedure 2020-44](#) issued on October 12, 2020, incorporating ARRC fallback language into legacy LIBOR contracts will be a non-taxable event. This relief may not apply to non-SOFR reference rates.

TERM SOFR

- On July 29, 2021, ARRC formally recommended forward-looking SOFR term rates, which may be used in legacy fallbacks and new contracts. In its press release, ARRC noted that this formal recommendation is a “major milestone” in the transition away

from U.S. dollar LIBOR. In light of this announcement, Vice Chair for Supervision of the Federal Reserve Board and Chair of the Financial Stability Board, Randal K. Quarles, emphasized that “[a]ll firms should be moving quickly to meet [the Federal Reserve Board’s] supervisory guidance advising them to end new use of LIBOR this year.”

- Prior to this announcement, market participants were looking for a forward-looking credit-sensitive alternative rate before transitioning away from LIBOR.² As a result, some market participants were considering other non-SOFR alternative rates such as AMERIBOR, Bloomberg Short-Term Bank Yield Index and U.S. Dollar ICE Bank Yield Index.
- With the announcement of a forward-looking term rate SOFR, there may be greater adoption of SOFR by market participants.

ISDA UPDATE

- Following the FCA’s announcement in March, ISDA launched a consultation on how to implement fallbacks for certain swap rates published by the IBA.³
- For the U.S. dollar LIBOR ICE Swap Rate, “a significant majority” of respondents indicated that they wanted to implement the fallbacks suggested by ARRC.⁴ As a result, ISDA is working on amendments to implement fallbacks for the U.S. dollar LIBOR ICE Swap Rate when a SOFR swap rate is published in a form that can be referenced in financial instruments.
- The IBA has not yet consulted on the potential cessation of the U.S. dollar LIBOR ICE Swap Rate, but expects to consult on this rate in “due course.”⁵

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Please do not hesitate to contact us with any questions.

² See, e.g., PWC, LIBOR Transition, Market Update: June 1–15, 2021, <https://www.pwc.com/us/en/industries/financial-services/library/pdf/pwc-libor-transition-market-update-americas-june-1-15.pdf>.

³ See ISDA, 2021 Consultation on Fallbacks for GBP LIBOR ICE Swap Rate & USD LIBOR ICE Swap Rate, <https://www.isda.org/a/TzDgE/Consultation-on-GBP-and-USD-ISR-Fallbacks-Final.pdf>.

⁴ See ISDA, ISDA Announces Results of Consultation on Fallbacks for GBP LIBOR ICE Swap Rate and USD LIBOR ICE Swap Rate, <https://www.isda.org/a/N0MgE/ISDA-Announces-Results-for-ICE-Swap-Rate-Fallbacks-Consultation.pdf>.

⁵ See ICE Benchmark Administration, ICE Swap Rate (accessed Aug. 8, 2021), <https://www.theice.com/iba/ice-swap-rate>.

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