Joint Statement on Managing the LIBOR Transition

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Purpose

Five federal financial institution regulatory agencies,[1] in conjunction with the state bank and state credit union regulators, (collectively, agencies) are jointly issuing this statement to emphasize the expectation that supervised institutions with LIBOR exposure continue to progress toward an orderly transition away from LIBOR. Additionally, this statement includes clarification regarding new LIBOR contracts, considerations when assessing appropriateness of alternative reference rates, and expectations for fallback language.

Failure to adequately prepare for LIBOR's discontinuance could undermine financial stability and institutions' safety and soundness and create litigation, operational, and consumer protection risks.

Background Information

On July 1, 2020, the Federal Financial Institutions Examination Council (FFIEC) issued a statement[2] that highlighted the financial, legal, operational, and consumer protection risks that will result from the LIBOR's discontinuation. The FFIEC statement encouraged supervised institutions to continue their efforts to prepare for the change and address risks associated with the LIBOR transition.

On March 5, 2021, the United Kingdom Financial Conduct Authority (FCA) and Intercontinental Exchange (ICE) Benchmark Administration (IBA) announced[3] that the one-week and two-month U.S. dollar (USD) LIBOR settings will cease to be published immediately after December 31, 2021. The publication of overnight and one-, three-, six-, and 12-month USD LIBOR settings will be extended through June 30, 2023, which will provide additional time to wind down or renegotiate existing contracts that reference these LIBOR settings. Importantly, the extension of publication for certain USD LIBOR rates is not an indication that any of the extended USD LIBOR rates will be subsequently published after June 30, 2023.

The Board, FDIC, and OCC previously communicated that a supervised institution may use any reference rate for its loans that the institution's management determines is appropriate based on its funding model and customer needs.[4] Separately, the OCC, Board, and FDIC issued a joint statement[5] that encouraged supervised institutions to cease entering into new contracts that use USD LIBOR as a reference rate as soon as practicable, but no later than December 31, 2021. The NCUA issued similar guidance encouraging institutions to transition away from using USD LIBOR as a reference rate as soon as possible, but no later than December 31, 2021, and to ensure existing contracts have robust fallback language that includes a clearly defined alternative reference rate.[6]

Supervisory Considerations

Clarification on the meaning of new LIBOR contracts

Given LIBOR's discontinuance, the agencies believe that entering into new contracts, including derivatives, that use LIBOR as a reference rate after December 31, 2021, would create safety and soundness risks, including litigation, operational, and consumer protection risks. For this purpose, a new contract would include an agreement that (i) creates additional LIBOR exposure for a supervised institution or (ii) extends the term of an existing LIBOR contract.[7] A draw on an existing agreement that is legally enforceable (e.g., a committed credit facility) would not be viewed as a new contract.

Additionally, considering the narrowing timeline involved, contracts entered into on or before December 31, 2021, should either use a reference rate other than LIBOR or have fallback language that provides for use of a strong and clearly defined alternative reference rate after LIBOR's discontinuation.

Considerations when assessing the appropriateness of alternative reference rates

Safe-and-sound practices include conducting the due diligence necessary to ensure that alternative rate selections are appropriate for the supervised institution's products, risk profile, risk management capabilities, customer and funding needs, and operational capabilities. As part of their due diligence, supervised institutions should understand how their chosen reference rate is constructed and be aware of any fragilities associated with that rate and the markets that underlie it.

Expectations for fallback language

Supervised institutions are advised to identify all contracts that reference LIBOR, lack adequate fallback language, and will mature after the relevant tenor ceases. Going forward, supervised institutions are encouraged to include fallback language in new or updated contracts that provides for using a strong and clearly defined fallback rate when the initial reference rate is discontinued.

Additional considerations

Supervised institutions are reminded of previous agency communications[8] and are encouraged to take the following actions as they prepare for the LIBOR transition:

- develop and implement a transition plan for communicating with consumers, clients, and counterparties; and
- ensure systems and operational capabilities will be ready for transition to a replacement reference rate after LIBOR's discontinuation.

Supervised institutions that take a comprehensive and proactive approach will be better prepared for transitioning away from LIBOR. Supervisory focus and review will continue to increase as the LIBOR cessation date approaches.

Footnotes

1 The agencies are the Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), the National Credit Union Administration (NCUA), and the Consumer Financial Protection Bureau (CFPB).

2 See FFIEC - Joint Statement on Managing the LIBOR Transition

3 See FCA announcement on future cessation and loss of representativeness of the LIBOR benchmarks

4 See OCC Bulletin 2020-98; Federal Reserve Supervision and Regulation (SR) Letter 20-25; and FDIC Financial Institution Letter 104-2020.

5 Agency statements on the LIBOR transition: OCC Bulletin 2020-104; Federal Reserve SR 20-27; and FDIC PR-129-2020.

6 See NCUA Letter to Credit Unions 21-CU-03 (May 2021) and Supervisory Letter 21-01 (May 2021).

7 The agencies recognize that there may be limited circumstances in which it would be appropriate for an institution to enter into new USD LIBOR contracts after December 31, 2021, such as (i) transactions executed for purposes of required participation in a central counterparty auction procedure in the case of a member default, including transactions to hedge the resulting USD LIBOR exposure; (ii) market making in support of client activity related to USD LIBOR transactions executed before January 1, 2022; (iii) transactions that reduce or hedge the institution's or any client of the institution's USD LIBOR exposure on contracts entered into before January 1, 2022; and (iv) novations of USD LIBOR transactions executed before January 1, 2022.

8 For example, the Federal Reserve issued guidance (SR Letter 21-7) to assist examiners in assessing supervised firms' progress in transitioning away from LIBOR; the OCC issued guidance (OCC Bulletin 2020-68) and a self-assessment tool (OCC Bulletin 2021-7) for supervised institutions to evaluate their preparedness for LIBOR cessation; the Conference of State Bank Supervisors issued a self-assessment tool for supervised institutions in September 2019 titled Ten Steps for LIBOR Transition; the NCUA issued a Letter to Credit Unions (May 2021, LTCU 21-CU-03) and a Supervisory Letter to field staff on the LIBOR transition; the FDIC published a Supervisory Insights Journal Article (winter 2018) as a resource for supervised institutions in addressing the LIBOR transition; and the CFPB issued a notice of proposed rulemaking and a list of frequently asked questions relating to the LIBOR transition (June 4, 2020).

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