FEDERAL RESERVE SYSTEM

12 CFR Part 253

Regulation ZZ; Docket No. R-1775

RIN 7100-AG34

Regulation Implementing the Adjustable Interest Rate (LIBOR) Act

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule.

SUMMARY: The Board is adopting a final rule (final rule) to implement the Adjustable Interest Rate (LIBOR) Act. The final rule establishes benchmark replacements for contracts governed by U.S. law that reference certain tenors of U.S. dollar LIBOR (the overnight and one-, three-, six-, and 12-month tenors) and that do not have terms that provide for the use of a clearly defined and practicable replacement benchmark rate following the first London banking day after June 30, 2023. The final rule also provides additional definitions and clarifications consistent with the Adjustable Interest Rate (LIBOR) Act.

DATES: The final rule is effective [INSERT DATE THAT IS 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: David Bowman, Senior Associate Director, 202-452-2334, Division of Monetary Affairs; Lucy Chang, Special Counsel, 202-475-6331, or Cody Gaffney, Senior Attorney, 202-452-2674, both of the Legal Division; or Lesley Chao, Lead Financial Institution Policy Analyst, 202-974-7063, Division of Supervision and Regulation. For users of TTY-TRS, please call 711 from any telephone, anywhere in the United States.

SUPPLEMENTARY INFORMATION:

I. Background

A. LIBOR

LIBOR, formerly known as the London Interbank Offered Rate, is an interest rate benchmark that was the dominant reference rate used in financial contracts in recent decades and remains in extensive use today, serving as the benchmark rate in more than $200 trillion worth of contracts worldwide.[1] While over-the-counter and exchange-traded derivatives account for the vast majority of this estimated exposure to LIBOR, LIBOR is also referenced in trillions of dollars' worth of business and consumer loans, bonds, securitizations, and nonfinancial corporate contracts.

LIBOR is intended to reflect the rate at which large banks can borrow wholesale funds on an unsecured basis. LIBOR is calculated based on submissions contributed by a panel of large, globally active banks (LIBOR panel banks). Until December 31, 2021, LIBOR's administrator calculated and published LIBOR each London business day for five currencies (USD, GBP, EUR, CHF, and JPY) and seven borrowing periods, known as tenors (overnight, one week, one month, two months, three months, six months, and twelve months).

Over the past decade, financial regulators have expressed growing concern regarding the structural vulnerabilities and robustness of LIBOR.[2] Following the financial crisis of 2007–2009, other forms of borrowing have largely replaced short-term unsecured wholesale borrowing as a source of funds for most banks, resulting in far fewer market transactions on which LIBOR panel banks can base their submissions. At the same time, weaknesses in the governance of

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[1] 12 U.S.C. 5801(a)(1).

[2] *See e.g.,* Financial Stability Oversight Council, *2013 Annual Report* at 137–42.

LIBOR created the opportunity for LIBOR panel banks to manipulate LIBOR, and numerous high-profile examples of such manipulation were exposed.[3] Following these scandals, in 2013, the administration of LIBOR was transferred to a new administrator, ICE Benchmark Administration Limited (IBA), which is regulated by the U.K.'s Financial Conduct Authority (FCA).

Despite increased regulatory oversight and efforts to improve LIBOR, confidence in LIBOR continued to wane, and financial regulators and market participants began to search for alternative reference rates and develop plans for a transition away from LIBOR. In the United States, this effort has been led by the Alternative Reference Rates Committee (ARRC), a group of private-sector firms convened jointly by the Board and the Federal Reserve Bank of New York (FRBNY) in 2014.[4] Among other work, the ARRC identified the Secured Overnight Financing Rate (SOFR) as its recommended replacement for USD LIBOR and developed a Paced Transition Plan to support the transition from USD LIBOR to SOFR.[5] SOFR is a broad measure of the cost of borrowing cash overnight collateralized by U.S. Treasury securities.[6]

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[3] *See, e.g.*, U.S. Dep't of Justice, *Barclays Bank PLC Admits Misconduct Related to Submissions for London Interbank Offered Rate and the Euro Interbank Offered Rate and Agrees to Pay $160 Million Penalty* (June 27, 2012), https://www.justice.gov/opa/pr/barclays-bank-plc-admits-misconduct-related-submissions-london-interbank-offered-rate-and; U.S. Dep't of Justice, *Rabobank Admits Wrongdoing in Libor Investigation, Agrees to Pay $325 Million Criminal Penalty* (Oct. 29, 2013), https://www.justice.gov/opa/pr/rabobank-admits-wrongdoing-libor-investigation-agrees-pay-325-million-criminal-penalty; U.S. Dep't of Justice, *Deutsche Bank's London Subsidiary Agrees to Plead Guilty in Connection with Long-Running Manipulation of LIBOR* (Apr. 23, 2015), https://www.justice.gov/opa/pr/deutsche-banks-london-subsidiary-agrees-plead-guilty-connection-long-running-manipulation.

[4] *See* ARRC, *About*, https://www.newyorkfed.org/arrc/about (last visited July 7, 2022).

[5] ARRC, *The ARRC Selects a Broad Repo Rate as its Preferred Alternative Reference Rate* (June 22, 2017), https://www.newyorkfed.org/medialibrary/microsites/arrc/files/2017/ARRC-press-release-Jun-22-2017.pdf; ARRC, *Second Report* (Mar. 2018) at 17, https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2018/ARRC-Second-report.

[6] SOFR is published daily by the FRBNY in cooperation with the U.S. Department of the Treasury's Office of Financial Research. *See* Fed. Res. Bk. of New York, *Secured Overnight Financing Rate Data*,

Similar groups were convened in other jurisdictions and identified comparable risk-free rates as recommended replacements for the other LIBOR currencies.

In July 2017, following the departure of some panel banks, the FCA announced that the remaining LIBOR panel banks had voluntarily agreed to sustain LIBOR through the end of 2021 to facilitate an orderly transition away from LIBOR.[7] On March 5, 2021, the FCA announced that, after December 31, 2021, IBA would cease publishing 24 currency and tenor pairs (known as settings). The discontinued LIBOR settings included one-week and two-month USD LIBOR, as well as all EUR and CHF LIBOR tenors and most GBP and JPY LIBOR tenors.[8] However, the FCA required IBA to continue publishing, on a temporary basis, certain GBP and JPY LIBOR tenors on a "synthetic" basis, stating that any such synthetic LIBOR settings "will no longer be representative of the underlying market and economic reality the setting is intended to measure."[9]

To allow most legacy USD LIBOR contracts governed by non-U.S. law to mature without disruption, the FCA also announced that the panels for the remaining five tenors of USD LIBOR would continue through, but cease after, June 30, 2023. The FCA has proposed to require IBA to continue publishing one-, three-, or six-month USD LIBOR on a synthetic basis

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https://www.newyorkfed.org/markets/reference-rates/sofr (last visited Nov. 29, 2022). SOFR is calculated as a volume-weighted median of transaction-level tri-party repurchase agreement (repo) data collected from the Bank of New York Mellon, as well as general collateral financing repo transaction data and data on bilateral Treasury repo transactions cleared through the Fixed Income Clearing Corporation's delivery-versus-payment service, which are obtained from the U.S. Department of the Treasury's Office of Financial Research. *Id*.

[7] *See* Andrew Bailey, Chief Executive, FCA, *The Future of LIBOR* (July 27, 2017), https://www.fca.org.uk/news/speeches/the-future-of-libor.

[8] *See* FCA, *FCA Announcement on Future Cessation and Loss of Representativeness of the LIBOR Benchmarks* (Mar. 5, 2021), https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf.

[9] *Id.*

until the end of September 2024 (synthetic LIBOR).[10] As with synthetic GBP or JPY LIBOR settings, the FCA has announced that synthetic LIBOR settings are "not representative of the markets that the original LIBOR settings were intended to measure."[11]

In response to the planned cessation of USD LIBOR, U.S. financial regulators have encouraged market participants to transition away from USD LIBOR as a reference rate as soon as practicable. For example, in November 2020, the Office of the Comptroller of the Currency (OCC), the Board, and the Federal Deposit Insurance Corporation (FDIC) issued an interagency statement stating that banking organizations generally should not enter into new contracts referencing USD LIBOR after December 31, 2021.[12] The ARRC and other private industry groups also have worked to encourage an orderly transition away from USD LIBOR. For example, as discussed further below, the International Swaps and Derivatives Association (ISDA) has developed a contractual protocol by which parties to derivative transactions governed by ISDA documentation and other financial contracts can agree to incorporate more robust contractual fallback provisions that replace references to LIBOR with an alternative benchmark based on SOFR in the event that a given LIBOR rate ceases publication or is found by the FCA to no longer be representative.[13] The ARRC has developed guiding principles for

[10] *See* FCA, *Further Consultation and Announcements on the Wind-down of LIBOR* (Nov. 23, 2022), https://www.fca.org.uk/news/news-stories/further-consultation-announcements-wind-down-libor (discussing further consultation on synthetic LIBOR, https://www.fca.org.uk/publication/consultation/cp22-21.pdf).

[11] *See* FCA, Consultation on 'Synthetic' US Dollar LIBOR and Feedback to CP22/11 ¶ 1.7 (Nov. 2022), https://www.fca.org.uk/publication/consultation/cp22-21.pdf; *see also* FCA, *FCA Announcement on Future Cessation and Loss of Representativeness of the LIBOR Benchmarks* (Mar. 5, 2021), https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf.

[12] *See* Board, FDIC, OCC, *Statement on LIBOR Transition* (Nov. 30, 2020), https://www.federalreserve.gov/supervisionreg/srletters/SR2027a1.pdf.

[13] ISDA, ISDA 2020 IBOR Fallbacks Protocol, https://www.isda.org/protocol/isda-2020-ibor-fallbacks-protocol/.

similar fallback language for cash products such as business loans, securitizations, floating rating notes, and consumer products, including specific recommended language for certain cash products.[14] ISDA's IBOR protocol and the ARRC fallback language recommendations were both subject to numerous public consultations, and they have received widespread adoption subsequent to their release.[15]

B. Legacy Contracts and the Adjustable Interest Rate (LIBOR) Act

Notwithstanding governmental and private-sector efforts to encourage market participants to prepare for the cessation of USD LIBOR, there are a significant number of existing contracts that reference USD LIBOR. Of particular concern are so-called "tough legacy contracts," which are contracts that reference USD LIBOR and will not mature by June 30, 2023, but which lack adequate fallback provisions providing for a clearly defined or practicable replacement benchmark following the cessation of USD LIBOR. To address these tough legacy contracts, multiple states adopted legislation, initially proposed by the ARRC, to provide a

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[14] *See, e.g.*, ARRC, *ARRC Guiding Principles for More Robust LIBOR Fallback Contract Language in Cash Products* (July 9, 2018), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2018/ARRC-principles-July2018; ARRC, *Summary of ARRC's LIBOR Fallback Language* (Nov. 15, 2019), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/LIBOR_Fallback_Language_Summary; ARRC, *ARRC Recommendations Regarding More Robust Fallback Language for New Issuance of LIBOR Securitizations* (May 31, 2019), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/Securitization_Fallback_Language.pdf; ARRC, *ARRC Recommendations Regarding More Robust LIBOR Fallback Contract Language for New Closed-End, Residential Adjustable Rate Mortgages* (Nov. 15, 2019), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/ARM_Fallback_Language.pdf.

[15] *See, e.g.*, ISDA, *ISDA 20202 IBOR Fallbacks Protocol – List of Adhering Parties*, https://www.isda.org/protocol/isda-2020-ibor-fallbacks-protocol/adhering-parties (last visited Nov. 29, 2022). The U.S. Department of Justice (DOJ) also reviewed ISDA's IBOR protocol, concluded that it is unlikely to harm competition, and stated that the DOJ would not challenge ISDA's IBOR protocol under federal antitrust laws. *See* DOJ, *Justice Department Issues Favorable Business Review Letter to ISDA for Proposed Amendments to Address Interest Rate Benchmarks* (Oct. 1, 2020), https://www.justice.gov/opa/pr/justice-department-issues-favorable-business-review-letter-isda-proposed-amendments-address.

statutory remedy for financial contracts governed by the laws of the enacting states that reference USD LIBOR, will not mature until after USD LIBOR ceases or becomes nonrepresentative, and have no effective means to replace USD LIBOR after it ceases or becomes nonrepresentative.[16] While these state laws provided a solution for a large number of tough legacy contracts, further legislative action was needed to address tough legacy contracts governed by the laws of other states.

Recognizing the need for a uniform, nationwide solution for replacing references to USD LIBOR in tough legacy contracts, on March 15, 2022, Congress enacted the Adjustable Interest Rate (LIBOR) Act (the "LIBOR Act") as part of the Consolidated Appropriations Act, 2022.[17] Among other things, the LIBOR Act lays out a set of default rules that apply to tough legacy contracts subject to U.S. law.

The LIBOR Act broadly distinguishes between three categories of LIBOR contracts with different types of fallback provisions. For these purposes, the LIBOR Act defines "LIBOR contract" broadly to include any obligation or asset that, by its terms, uses the overnight, one-month, three-month, six-month, or 12-month tenors of USD LIBOR as a benchmark.[18] Consistent with this definition, the final rule and the remainder of the discussion will focus on these stated tenors of USD LIBOR only. The LIBOR Act defines "fallback provisions" to mean

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[16] *See, e.g.*, N.Y. Gen. Oblig. Law art. 18-C; Ala. Code tit. 5, ch. 28; Fla. Stat. 687.15; Tenn. Code Ann. § 47-33-101 *et seq*.; Ind. Code 28-10-2; Neb. Rev. Stat. 8-3101 *et seq*.

[17] Pub. L. 117-103, div. U, codified at 12 U.S.C. 5801 *et seq*.

[18] *See* 12 U.S.C. 5802(16) (definition of "LIBOR contract"), 5802(15) (definition of "LIBOR"). The LIBOR Act does not apply to contracts that use the one-week or two-month tenors of USD LIBOR as a benchmark. *Id.* The LIBOR Act defines "benchmark" to mean an index of interest rates or dividend rates that is used, in whole or in part, as the basis of or as a reference for calculating or determining any valuation, payment, or other measurement. 12 U.S.C. 5802(1).

the terms in a LIBOR contract for determining a benchmark replacement, including any terms relating to the date on which the benchmark replacement becomes effective.[19]

The first category of LIBOR contracts encompasses contracts that contain fallback provisions identifying a specific benchmark replacement that is not based in any way on any USD LIBOR values (except to account for the difference between LIBOR and the benchmark replacement) and that do not require any person (other than a benchmark administrator) to conduct a poll, survey, or inquiries for quotes or information concerning interbank lending or deposit rates.[20] These LIBOR contracts generally can be expected to transition to the contractually agreed-upon benchmark replacement as provided by their fallback provisions on or before the LIBOR replacement date—the first London banking day after June 30, 2023 (unless the Board determines that any LIBOR tenor will cease to be published or cease to be representative on a different date).[21]

The second category of LIBOR contracts encompasses (i) contracts that contain no fallback provisions, as well as (ii) LIBOR contracts with fallback provisions that do not identify a determining person (as described below) and that only (A) identify a benchmark replacement that is based in any way on USD LIBOR values (except to account for the difference between LIBOR and the benchmark replacement) or (B) require that a person (other than a benchmark administrator) conduct a poll, survey, or inquiries for quotes or information concerning interbank

[19] 12 U.S.C. 5802(11). The LIBOR Act defines "benchmark replacement" to mean a benchmark, or an interest rate or dividend rate (which may or may not be based in whole or in part on a prior setting of LIBOR), to replace LIBOR or any interest rate or dividend rate based on LIBOR, whether on a temporary, permanent, or indefinite basis, under or with respect to a LIBOR contract. 12 U.S.C. 5802(3).

[20] *See* 12 U.S.C. 5803(b). The LIBOR Act defines "benchmark administrator" to mean a person that publishes a benchmark for use by third parties. 12 U.S.C. 5802(2).

[21] 12 U.S.C. 5803(f)(2); *see also* 12 U.S.C. 5802(17) (definition of "LIBOR replacement date"). The Board has not determined, and does not expect to determine, a LIBOR replacement date earlier than the first London banking day after June 30, 2023.

lending or deposit rates.[22] For this second category of LIBOR contracts, the LIBOR Act provides that the benchmark replacement on the LIBOR replacement date will be the Board-selected benchmark replacement identified by the Board, which must be based on SOFR and include the tenor spread adjustments required under the LIBOR Act.[23] Thus, any references to USD LIBOR in LIBOR contracts in this second category will, by operation of law, be replaced by the Board-selected benchmark replacement on the LIBOR replacement date.

For contracts that fall into this second category, the LIBOR Act provides a series of statutory protections, including that 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 the use of the Board-selected benchmark replacement as a benchmark replacement.[24] These statutory provisions are described in more detail below.

The third category of LIBOR contracts encompasses LIBOR contracts that contain fallback provisions authorizing a determining person to determine a benchmark replacement.[25] The application of the LIBOR Act to LIBOR contracts in this third category depends on the determination, if any, made by the determining person. Where a determining person does not select a benchmark replacement by the LIBOR replacement date or the latest date for selecting a benchmark replacement according to the terms of the LIBOR contract (whichever is earlier), the

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[22] The LIBOR Act deems these types of fallback provisions to be null and void by operation of law. 12 U.S.C. 5803(b). To the extent a LIBOR contract contains fallback provisions that would be applied ahead of another, separate benchmark replacement, then under the LIBOR Act, these fallback provisions would be disregarded and the separate benchmark replacement would apply.

[23] 12 U.S.C. 5803(a)–(b); *see also* 12 U.S.C. 5802(6) (definition of "Board-selected benchmark replacement").

[24] 12 U.S.C. 5804(a)–(b), (c)(1), (d).

[25] The LIBOR Act defines "determining person" to mean, with respect to any LIBOR contract, any person with the authority, right, or obligation, including on a temporary basis (as identified by the LIBOR contract or by the governing law of the LIBOR contract, as appropriate) to determine a benchmark replacement. 12 U.S.C. 5802(10).

LIBOR Act provides that the benchmark replacement for such LIBOR contract will be, by operation of law, the Board-selected benchmark replacement on and after the LIBOR replacement date.[26] Where a determining person selects the Board-selected benchmark replacement as the benchmark replacement, the LIBOR Act provides that such selection shall be (i) irrevocable, (ii) made by the earlier of the LIBOR replacement date and the latest date for selecting a benchmark replacement according to the terms of the LIBOR contract, and (iii) used in any determinations of the benchmark under or with respect to the LIBOR contract occurring on and after the LIBOR replacement date.[27]

Although the LIBOR Act does not require a determining person to select the Board-selected benchmark replacement as the benchmark replacement for a LIBOR contract, the statute provides a series of statutory protections for any determining person who does so, including that a determining person generally shall not 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 the selection of the Board-selected benchmark replacement as a benchmark replacement.[28]

Where the Board-selected benchmark replacement becomes the benchmark replacement for a LIBOR contract (either by operation of law or through the selection of a determining person), the LIBOR Act contemplates that certain conforming changes to a LIBOR contract may be necessary to facilitate the transition from USD LIBOR to the Board-selected benchmark replacement. These "benchmark replacement conforming changes" may arise in one of two ways. First, the LIBOR Act authorizes the Board to determine benchmark replacement

[26] 12 U.S.C. 5803(c)(3).

[27] 12 U.S.C. 5803(c)(2).

[28] 12 U.S.C. 5804(c)(1)–(2), 5804(a)–(d). This statutory safe harbor also applies to the use of the Board-selected benchmark replacement other than at the selection of a determining person.

conforming changes that, in its discretion, would address one or more issues affecting the implementation, administration, and calculation of the Board-selected benchmark replacement in LIBOR contracts.[29] Second, for a LIBOR contract that is not a consumer loan, a calculating person may, in its reasonable judgment, determine that benchmark replacement conforming changes are otherwise necessary or appropriate to permit the implementation, administration, and calculation of the Board-selected benchmark replacement under or with respect to a LIBOR contract after giving due consideration to any benchmark replacement conforming changes determined by the Board.[30] For this purpose, the LIBOR Act defines "calculating person" to mean, with respect to any LIBOR contract, any person, including the determining person, responsible for calculating or determining any valuation, payment, or other measurement based on a benchmark.[31]

The LIBOR Act provides that all benchmark replacement conforming changes (whether determined by the Board or, if applicable, a calculating person) shall become an integral part of the LIBOR contract, and a calculating person shall not be required to obtain consent from any other person prior to the adoption of benchmark replacement conforming changes.[32] In addition, the determination, implementation, and performance of benchmark replacement conforming changes are generally subject to certain statutory protections provided by the LIBOR Act, which are designed to ensure continuity of contract.[33] Finally, where a calculating person implements

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[29] 12 U.S.C. 5802(4)(A).

[30] 12 U.S.C. 5802(4)(B). The LIBOR Act defines "consumer loan" to mean a consumer credit transaction, which is defined by cross-reference to the Truth in Lending Act. 12 U.S.C. 5802(9) (definition of "consumer loan"); 5802(8) (definitions of "consumer" and "credit").

[31] 12 U.S.C. 5802(7).

[32] 12 U.S.C. 5803(d).

[33] *See* 12 U.S.C. 5804(a)–(d).

or (in the case of a LIBOR contract that is not a consumer loan) determines benchmark replacement conforming changes, the LIBOR Act provides that the calculating person shall not be subject to any claim or cause of action in law or equity or request for equitable relief, or have liability for damages.[34]

The LIBOR Act includes various other provisions beyond the main operative provisions and statutory protections described above. For example, the LIBOR Act generally provides that a bank may use any benchmark (including a benchmark that is not SOFR) in any non-IBOR loan made before, on, or after the date of enactment of the LIBOR Act that the bank determines to be appropriate, and that no Federal supervisory agency may take enforcement or supervisory action against the bank solely because that benchmark is not SOFR.[35] Other provisions of the LIBOR Act amend the Trust Indenture Act of 1939 (15 U.S.C. 77ppp(b)) and the Higher Education Act of 1965 (20 U.S.C. 1087–1(b)(2)(I)), respectively, to facilitate the transition from USD LIBOR.[36] Finally, the LIBOR Act expressly preempts any provision of State or local law relating to the selection or use of a benchmark replacement or related conforming changes, or expressly limiting the manner of calculating interest (including the compounding of interest) as that provision applies to the selection or use of a Board-selected benchmark replacement or benchmark replacement conforming changes.[37]

In July 2022, the Board invited public comment on a notice of proposed rulemaking (proposed rule) to implement the LIBOR Act.[38] The comment period ended on August 29, 2022.

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[34] 12 U.S.C. 5804(c).

[35] 12 U.S.C. 5805.

[36] LIBOR Act sections 108–09, codified at 15 U.S.C. 77ppp(b) and 20 U.S.C. 1087-1(b)(2)(I).

[37] 12 U.S.C. 5806.

[38] 87 FR 45268 (July 28, 2022).

II. Overview of the Final Rule

As required by the LIBOR Act, the Board's final rule identifies SOFR-based Board-selected benchmark replacements for LIBOR contracts that will not mature prior to the LIBOR replacement date and do not contain clear and practicable benchmark replacements. The final rule identifies different SOFR-based Board-selected benchmark replacements for different categories of LIBOR contracts. In addition, the final rule identifies certain benchmark replacement conforming changes related to the implementation, administration, and calculation of the Board-selected benchmark replacement. Consistent with the LIBOR Act, the final rule also expressly indicates that a determining person may select the Board-selected benchmark replacement for the relevant type of LIBOR contract, with any applicable benchmark replacement conforming changes. In addition, the final rule expressly provides that the LIBOR Act's protections related to the selection or use of the Board-selected benchmark replacement shall apply to any LIBOR contract for which the Board-selected benchmark replacement becomes the benchmark replacement (whether by operation of law or by the selection of a determining person). Finally, the final rule indicates that, under the LIBOR Act, the Board's final rule preempts any state or local law or standard relating to the selection or use of a benchmark replacement or conforming changes.

III. Summary of Public Comments

The Board received 29 comment letters in response to the proposed rule.[39] Commenters included eight banks and banking trade associations; six other trade associations; four government-sponsored enterprises; four consultants and researchers; three individuals; one government agency; one consortium of consumer groups; and two anonymous comments.

Ten of these comment letters included an explicit statement of support for the proposal. One commenter opposed the proposal based on disagreement with the policy objectives of the LIBOR Act.[40] The LIBOR Act is federal law, and the Board is required to implement the LIBOR Act consistent with the stated policy objectives of Congress. As described below, the Board's discretion under the LIBOR Act is limited to identifying SOFR-based Board selected benchmark replacements for LIBOR contracts subject to the act, plus a few other narrow areas.

Most of the remaining commenters provided feedback on various topics related to the proposal (including the proposed Board-selected benchmark replacements for specific categories of contracts, synthetic LIBOR, conforming changes, and certain protections expressly provided by the LIBOR Act), but did not express support or opposition for the overall proposal. Feedback from commenters related to particular aspects of the proposal is discussed, as applicable, in section IV.

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[39] Two of these commenters submitted additional comment letters that supplemented their original comment letters; these supplemental comment letters have not been included in the count of 29 comment letters. In addition, the count of 29 comment letters does not include two comment letters submitted to the Board that addressed topics unrelated to the LIBOR Act.

[40] This commenter referenced the manipulation of LIBOR by panel banks and indicated that the identification of Board-selected benchmark replacements under the LIBOR Act and proposal would be most likely to benefit banks rather than certain individuals who may not be able directly to obtain LIBOR-based financing. The commenter further criticized the proposal for failing to address various social issues outside the scope of the LIBOR Act, including ethics standards and climate change effects.

One commenter provided feedback on the Board's analysis of the proposed rule under the Regulatory Flexibility Act. This comment is discussed in more detail in section V.

Finally, a commenter requested that the prudential regulators engage in specific efforts to educate banks, consumers, other issuers of financial products, and impacted industry groups, potentially through partnerships with industry groups and capital market participants, on (i) the need to transition away from LIBOR to viable alternative rates like SOFR, and (ii) the likely impact such transition would have on financial instruments that currently reference LIBOR. As previously discussed, U.S. financial regulators have encouraged banks and market participants over the past several years to transition away from USD LIBOR as a reference rate as soon as practicable, including through issuance of an interagency statement.[41] In addition, the ARRC and third parties such as ISDA have engaged in significant efforts to facilitate and to educate parties on the transition away from LIBOR as LIBOR's cessation grows closer. Based on these and other industry efforts, the Board believes that ample information is available concerning the transition away from LIBOR.

IV. Section-by-Section Analysis

A. Section 253.1 – Authority, Purpose, and Scope

Section 253.1 of the final rule sets forth the authority for, purpose of, and scope of the final rule. Significantly, and consistent with the statute as described above, the final rule does not apply to (i) contracts that do not reference the overnight or one-, three-, six-, or 12-month tenors of LIBOR or (ii) LIBOR contracts that have fallback provisions providing for the use of a clearly defined and practicable replacement benchmark for LIBOR (including LIBOR contracts

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[41] *See, e.g.*, Board, FDIC, OCC, *Statement on LIBOR Transition* (Nov. 30, 2020), https://www.federalreserve.gov/supervisionreg/srletters/SR2027a1.pdf.

where the determining person selects a benchmark replacement other than the Board-selected benchmark replacement), except as provided in section 253.3(a)(1)(iii) and (c), which is discussed further below.[42] The proposed rule included a similar provision that received a small number of comments.[43] Section 253.1 also clarifies that any determining person's selection of the applicable Board-selected benchmark replacement is subject to sections 253.4 (identifying Board-selected benchmark replacements for specific categories of LIBOR contracts), 253.5 (concerning benchmark replacement conforming changes), 253.6 (concerning preemption), and 253.7 (concerning statutory protections for the selection or use of the Board-selected benchmark replacement). The rule also applies only to existing contracts governed by federal law or the law of any state. In addition, consistent with the LIBOR Act, section 253.1 states that the parties to a LIBOR contract may, by written agreement, specify that a LIBOR contract shall not be subject to the rule.[44]

B. Section 253.2 – Definitions

Section 253.2 provides definitions for many of the terms used in the rule. As with the proposal, most of the defined terms in section 253.2 are substantially the same as the defined terms in the LIBOR Act. However, section 253.2 includes additional definitions for the terms "30-day Average SOFR," "90-day Average SOFR," "CME Term SOFR," "derivative

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[42] 12 U.S.C. 5803(f)(2)–(3). However, consistent with the LIBOR Act, the final rule applies to LIBOR contracts that identify a determining person if the determining person has not selected a benchmark replacement by the earlier of (i) the LIBOR replacement date and (ii) the latest date for selecting a benchmark replacement according to the terms of the contract. *See* section 253.3(a)(1)(iii). In addition, the final rule mirrors provisions in the LIBOR Act related to any selection by a determining person of the Board-selected benchmark replacement. *See* section 253.3(c).

[43] Some commenters indicated that the proposed rule did not match the precise language of the LIBOR Act with respect to LIBOR contracts subject to the statute. These comments are discussed in more detail in section IV.C.

[44] *See* 12 U.S.C. 5803(f)(1).

transaction," "derivative transaction fallback observation day," "Federal Housing Finance Agency (FHFA)-regulated entity," "Federal Family Education Loan Program (FFELP) Asset-Backed Securitization (ABS)," "FHFA-regulated-entity contract," "ISDA protocol," and "relevant benchmark administrator," each of which is discussed below in connection with their use in section 253.4 or 253.5, as applicable.[45]

Definition of "determining person." Several commenters requested that the term "determining person" be defined to include persons with the right to select a replacement benchmark even if that right would vest only in the future or is subject to some contingency. The definition of "determining person" in section 103(10) of the LIBOR Act does not specify whether a determining person must have a *current* authority, right, or obligation to determine a benchmark replacement, or whether a person with a *contingent* authority, right, or obligation to determine a benchmark replacement also is a determining person.

The final rule clarifies this statutory ambiguity by defining the term "determining person" to include any person with the authority, right, or obligation, including on a temporary basis (as identified by the LIBOR contract or by the governing law of the LIBOR contract, as appropriate) to determine a benchmark replacement, whether or not the person's authority, right, or obligation is subject to any contingencies specified in the LIBOR contract or by the governing law of the

[45] One commenter indicated that some mortgage contracts may include provisions referencing a LIBOR "index" which the commenter believed should be interpreted to mean 12-month LIBOR based on "common use of the term 'index.'" That commenter suggested defining the term by regulation, since mortgage lenders otherwise may seek to broaden that definition. The LIBOR Act applies on an individual contract basis and looks to the particular provisions and definitions of that contract to evaluate whether the LIBOR Act applies. The final rule similarly applies to contracts on an individual basis, following evaluation of that contract's provisions. As a result, the Board does not believe it would be reasonable to adopt one definition of "index". However, the Board observes that the final rule, consistent with the LIBOR Act, replaces the specific tenor of LIBOR referenced in the LIBOR contract with a corresponding Board-selected benchmark replacement that incorporates the applicable tenor spread adjustment specified by the LIBOR Act.

LIBOR contract. The Board believes that this clarification is consistent with Congressional intent and will promote a smooth transition away from LIBOR for contracts that authorize a person to select a benchmark replacement when LIBOR becomes unavailable or non-representative. Under the final rule, such a person will qualify as a determining person before LIBOR becomes unavailable or non-representative, and therefore will have a statutory right under section 104(c)(1) and (c)(2) of the LIBOR Act to select the Board-selected benchmark replacement by the earlier of (i) the LIBOR replacement date and (ii) the latest date for selecting a benchmark replacement according to the terms of the LIBOR contract.[46]

The Board notes that, if the term "determining person" were interpreted to be limited only to persons with a *current* authority, right, or obligation to select a benchmark replacement, then, under certain LIBOR contracts, a person with a right to select a benchmark replacement when LIBOR becomes unavailable or non-representative would not become a determining person until the LIBOR replacement date—when LIBOR will *actually* become unavailable or non-representative. Accordingly, that person would need to wait until the LIBOR replacement date to exercise the statutory right under section 104(c)(1) and (c)(2) of the LIBOR Act to select the Board-selected benchmark replacement. The Board believes that this outcome—and the market disruption that would likely result from determining persons not selecting a benchmark replacement until the LIBOR replacement date—would be inconsistent with the Congressional intent to facilitate a smooth transition away from LIBOR and avoid disruptive litigation.

A commenter also requested that the final rule clarify that a "determining person" must have *sole* authority to decide a benchmark replacement and would not include a person who is required under the LIBOR contract to collaborate with other persons. The final rule clarifies that

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[46] *See* 12 U.S.C. 5803(c)(1)–(2).

the term “determining person” refers to a person with sole authority, right, or obligation, including on a temporary basis, to determine a benchmark replacement. Particularly when considered in the context of the various protections provided by the LIBOR Act with respect to a determining person’s selection of the Board-selected benchmark replacement, the most sensible interpretation is that such a selection would be made by only one person, rather than some group.[47]

Finally, as requested by a commenter, the Board hereby clarifies that a determining person selecting a Board-selected benchmark replacement pursuant to the authority and statutory protections of the LIBOR Act must choose the Board-selected benchmark replacement identified in section 253.4 for that contract type.

C. Section 253.3 – Applicability

Section 253.3 addresses the applicability of the regulation to LIBOR contracts. Specifically, for the following LIBOR contracts, the applicable Board-selected benchmark replacement indicated in section 253.4 of the final rule shall be the benchmark replacement for the contract on and after the LIBOR replacement date unless an express exception applies: (i) LIBOR contracts that contain no fallback provisions; (ii) LIBOR contracts that contain fallback provisions that identify neither a specific benchmark replacement nor a determining person; and (iii) LIBOR contracts that contain fallback provisions that identify a determining person, but where the determining person has not selected a benchmark replacement by the earlier of the LIBOR replacement date and the latest date for selecting a benchmark replacement according to the terms of the LIBOR contract, for any reason.[48]

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[47] *See, e.g.*, 12 U.S.C. 5803(c), 5804(c).

[48] Section 253.3(a) of the final rule.

In evaluating whether a LIBOR contract has any of these characteristics on the LIBOR replacement date, the final rule mirrors the statute and disregards any reference in any fallback provisions of a LIBOR contract to the following: (i) a benchmark replacement that is based in any way on any LIBOR value, except to account for the difference between LIBOR and the benchmark replacement; or (ii) a requirement that a person (other than a benchmark administrator) conduct a poll, survey, or inquiries for quotes or information concerning interbank lending or deposit rates (collectively, "LIBOR- or poll-based fallback provisions").[49] For example, if a LIBOR contract specifies the last published LIBOR value will be used if LIBOR is not published, but contains no other fallback provisions, then, pursuant to section 253.3(a)(2), this language would be disregarded as of the LIBOR replacement date. As a result, on the LIBOR replacement date, the LIBOR contract would be treated as having no fallback provisions and would transition to the Board-selected benchmark replacement under the final rule.

Consistent with the LIBOR Act, section 253.3(b) lists three types of contracts that generally would *not* be subject to the act: (i) any LIBOR contract that the parties have agreed in writing shall not be subject to the act; (ii) any LIBOR contract that contains fallback provisions that identify a benchmark replacement that is not based in any way on any LIBOR value (including the prime rate or the effective Federal Funds rate), after disregarding any LIBOR- or poll-based fallback provisions; and (iii) any LIBOR contract as to which a determining person does not elect to use the Board-selected benchmark replacement, again after disregarding any

[49] Section 253.3(a)(2) of the final rule. Under the statute, any such references in any fallback provisions of the LIBOR contract would be disregarded as if not included in the fallback provisions of the contract and would be deemed null and void and without any force or effect. 12 U.S.C. 5803(b).

LIBOR- or poll-based fallback provisions.[50] Importantly, however, even if a determining person does not *elect* to use the Board-selected benchmark replacement, the LIBOR contract will transition to the Board-selected benchmark replacement by operation of law if the determining person does not select any benchmark replacement by the earlier of (i) the LIBOR replacement date and (ii) the latest date for selecting a benchmark replacement according to the terms of the LIBOR contract.[51]

The proposed rule would have defined the term "covered contract" to mean those contracts that would be subject to the proposed rule and would transition to the applicable Board-selected benchmark replacement on and after the LIBOR replacement date. Similarly, the proposed rule would have defined the term "non-covered contract" to mean those contracts that generally would not be subject to the proposed rule. However, the proposed rule would have clarified that a determining person may select the Board-selected benchmark replacement specified in section 253.4 of the proposed rule as the benchmark replacement for a LIBOR contract, consistent with the LIBOR Act.[52] Several commenters indicated that the proposed rule's definitions of "covered contract" and "non-covered contract" did not fully align with the provisions of the LIBOR Act and were confusing. Therefore, these commenters recommended eliminating these terms. To avoid confusion, the final rule does not employ those terms and instead hews closely to the text of the LIBOR Act.

A commenter requested that the Board clarify that a determining person may "transition" to the Board-selected benchmark replacement by the LIBOR replacement date *or* the first reset date

[50] Section 253.3(b) of the final rule. As discussed further in section IV.G, nothing in the final rule is intended to alter or modify the availability or effect of the provisions of section 105(e) of the LIBOR Act, and those provisions may apply to these LIBOR contracts. *See* 12 U.S.C. 5804(e).

[51] Section 253.3(a)(1)(iii) of the final rule.

[52] Section 253.3(b)(2) of the proposed rule.

following that date, which the commenter argued was the same as a practical matter. The LIBOR Act authorizes a determining person to select the Board-selected benchmark replacement, but requires the determining person to make such selection by the earlier of (i) the LIBOR replacement date and (ii) the latest date for selecting a benchmark replacement according to the terms of the contract.[53] As a result, a determining person may not select the Board-selected benchmark replacement on any date after the LIBOR replacement date, including the first reset date following the LIBOR replacement date, and rely on the LIBOR Act's protections for such a selection. The final rule mirrors the statute by authorizing a determining person to select the Board-selected benchmark replacement by the earlier of (i) the LIBOR replacement date and (ii) the latest date for selecting a benchmark replacement according to the terms of the contract.[54] The Board notes that, under the LIBOR Act and the final rule, a determining person's inaction with respect to selecting a benchmark replacement by the LIBOR replacement date will, in the absence of another fallback provision in the LIBOR contract identifying a clear and practicable benchmark replacement, cause the LIBOR contract to transition to the Board-selected benchmark replacement rate by operation of law.[55]

In its proposal, the Board invited public comment as to whether the final rule should require a determining person to provide notice to one or more parties concerning the determining person's selection. Multiple commenters recommended that the final rule not impose any notice requirements on determining persons. No commenter expressed support for the imposition of

[53] 12 U.S.C. 5803(c)(2)(B).

[54] Section 253.3(c) of the final rule. Although selection of the benchmark replacement must occur by this date, since the LIBOR Act does not affect or alter the payment or reset dates under the LIBOR contract, the actual replacement of LIBOR for payment purposes may not occur until the first reset date after the LIBOR replacement date.

[55] 12 U.S.C. 5803(c)(3); *see also* section 253.3(a)(1)(iii) of the final rule.

notice requirements on determining persons. As a result, the final rule does not include impose any notice requirements.

Eurodollar deposit and lending rates. Some commenters requested clarification that a fallback provision that requires an inquiry for Eurodollar deposit or lending rates would be considered a LIBOR- or poll-based fallback provision that should be disregarded under the LIBOR Act and the final rule.[56] Eurodollars are unsecured U.S. dollar deposits held at banks or bank branches outside of the United States, and many institutional parties, including foreign central banks, are active lenders in the Eurodollar market.[57] U.S. depository institutions and U.S. branches of foreign banks indirectly borrow in Eurodollars by accepting Eurodollar deposits through offshore branches and then transferring the funds onshore.[58] The Board has therefore clarified that Eurodollar deposit and lending rates are "interbank lending or deposit rates" for purposes of the LIBOR rule. Accordingly, any requirement to conduct an inquiry concerning Eurodollar deposit and lending rates in fallback provisions of LIBOR contracts should be disregarded as if not included in those fallback provisions and deemed null and void and without any force or effect for purposes of the final rule. Should the LIBOR contract not identify either

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[56] Section 253.3(a)(2) of the final rule; 12 U.S.C. 5803(b). Under the statute, any such references in any fallback provisions of the LIBOR contract would be disregarded as if not included in the fallback provisions of the contract and would be deemed null and void and without any force or effect. 12 U.S.C. 5803(b).

Another commenter argued that fallback provisions referencing any third-party funding rate or certificate of deposit rate also should be disregarded, regardless of the method by which such rates would be obtained. Such treatment, however, would be inconsistent with the text of the LIBOR Act, which considers the methodology by which interbank lending or deposit rate information would be obtained. *See id*. It also would conflict with other provisions of the LIBOR Act, such as section 104(f)(2), which expressly indicates that the act does not alter or impair fallback provisions that identify a benchmark replacement that is not based in any way on any LIBOR value, including the prime rate or the effective Federal funds rate. 12 U.S.C. 5803(f)(2).

[57] Marco Cipriani and Julia Gouny, *The Eurodollar Market in the United States*, Liberty Street Economics (May 27, 2015), https://libertystreeteconomics.newyorkfed.org/2015/05/the-eurodollar-market-in-the-united-states.

[58] *Id*.

(i) a determining person or (ii) another clear and practicable benchmark replacement recognized under the LIBOR Act, the LIBOR contract will transition to the applicable Board-selected benchmark replacement under the final rule.

Relatedly, one commenter requested that the Board clarify how the rule applies to LIBOR contracts that give a determining person the right, authority, or obligation to select an "alternative index" or "alternative comparable index" that is "used for determining Eurodollar lending rates" ("Eurodollar DP contracts"). Section 104(c) of the LIBOR Act generally creates a statutory right for a determining person to select the Board-selected benchmark replacement; however, under section 104(f)(2) of the LIBOR Act, a determining person *cannot* exercise this right if the LIBOR contract identifies a benchmark replacement that is not based on any LIBOR value, such as the prime rate or the effective Federal funds rate. The commenter requested confirmation that references in Eurodollar DP contracts to an alternative index "used for determining Eurodollar lending rates" do not "identify a benchmark replacement" for purposes of section 104(f)(2), and thus that a determining person for a Eurodollar DP contract may select the Board-selected benchmark replacement pursuant to section 104(c) of the LIBOR Act.

Section 104(f)(2) of the LIBOR Act is intended to exclude from the act's scope only those contracts that identify a specific benchmark replacement such as the prime rate. Eurodollar DP contracts provide certain guidelines for determining persons to follow in selecting a benchmark replacement, but they do not identify a specific benchmark replacement. Accordingly, the Board confirms that a determining person for a Eurodollar DP contract may

exercise the statutory right to select the Board-selected benchmark replacement under section 104(c) of the LIBOR Act and section 253.3(c) of the final rule.[59]

Other provisions of LIBOR contracts. The final rule includes a new paragraph stating that LIBOR contracts that transition to the Board-selected benchmark replacement generally will not have their other provisions altered or impaired by the final rule.[60] For example, the final rule states that provisions specifying the date for determining a benchmark (except in the case of derivative transactions and Federal Home Loan Bank advances, as discussed in more detail in section IV.D) would not be affected. This example is similar to a provision in the proposed rule that indicated that selection and use of the Board-selected benchmark replacement would not affect the dates on which the contractual rates are determined.[61]

Other contractual provisions that the final rule expressly does not affect include, but are not limited to, (i) provisions specifying rounding conventions for a benchmark; (ii) provisions referencing LIBOR or any LIBOR value prior to the LIBOR replacement date (including any provision requiring a person to look back to a LIBOR value as of a date preceding the LIBOR replacement date); (iii) provisions applying any cap, floor, modifier, or spread adjustment to which LIBOR had been subject pursuant to the terms of a LIBOR contract; (iv) certain provisions of Federal consumer financial law; and (v) except as provided in 12 U.S.C. 5804(c),

[59] The Board notes, however, that this statutory right would not be available to the determining person if the LIBOR contract *does* identify a specific benchmark replacement such as the prime rate.

[60] Section 253.3(d) of the final rule.

[61] Section 253.4(d) of the proposed rule. The proposed rule generally would have replaced references to "LIBOR" in LIBOR contracts with the proposed Board-selected benchmark replacement, without any modification of other contractual provisions. 87 FR 45268, 45276 (July 28, 2022).

the rights or obligations of any person, or the authorities of any agency, under Federal consumer financial law, as defined in 12 U.S.C. 5481.[62]

Some commenters had requested that the final rule expressly state its impact on these types of provisions, particularly provisions specifying rounding conventions or lookback periods that straddle the LIBOR replacement date, perhaps as benchmark replacement conforming changes. The Board believes it is most sensible to address provisions such as those listed above by clarifying that they would not be affected by the final rule.[63]

Synthetic LIBOR. When issuing the proposal, the Board sought feedback on whether the final rule should clarify how the LIBOR Act would apply if the FCA requires IBA (or any successor administrator) to publish synthetic LIBOR on and after the LIBOR replacement date. The Board specifically requested comment 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). For example, the Board requested comment on whether the final rule should provide that a LIBOR contract containing fallback provisions that identify a clear and practicable benchmark replacement (*e.g.*, the prime rate) but lack an express non-representativeness trigger would transition to the benchmark replacement specified in the LIBOR contract (*i.e.*, the prime rate) on the earlier of (i) the date specified pursuant to the LIBOR contract or (ii) the LIBOR replacement date.

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[62] Section 253.3(d) of the final rule.

[63] As described further in section IV.E., the final rule does include certain benchmark replacement conforming changes.

Several commenters supported the clarification outlined in the proposal. In general, these commenters argued that such clarification would (i) be consistent with the intent of the statute, (ii) promote an orderly transition away from LIBOR, (iii) reduce disruptive litigation, and (iv) be reasonable.

However, some commenters argued that the Board lacks the legal authority to adopt the clarification outlined in the proposal. In particular, these commenters noted that LIBOR contracts containing fallback provisions that identify a specific benchmark replacement (*e.g.*, the prime rate) are outside the scope of the LIBOR Act, even if they lack an express non-representativeness trigger. Accordingly, these commenters recommended that the Board clarify only the ambiguity described in the proposal with respect to LIBOR contracts that authorize a *determining person* to select a benchmark replacement when LIBOR is unavailable

Other commenters gave other suggestions for addressing synthetic LIBOR. For example, one commenter asked the Board to work with the FCA to avoid the publication of synthetic LIBOR altogether. Other commenters suggested that the Board should deem LIBOR to be unavailable for all LIBOR contracts within the scope of the LIBOR Act even if synthetic LIBOR would be published, unless a determining person affirmatively selects synthetic LIBOR as a benchmark replacement; these commenters argued that construing synthetic LIBOR's publication as continued availability of LIBOR would be inconsistent with the purposes of the LIBOR Act.

The Board has considered this issue in light of the comments received. The Board believes that LIBOR contracts containing fallback provisions that identify a specific benchmark replacement are outside the scope of the LIBOR Act, even if these fallback provisions lack an express non-representativeness trigger. In particular, section 102(b)(3) of the LIBOR Act states

that one purpose of the statute is to allow existing contracts that reference LIBOR but provide for the use of a clearly defined and practicable replacement to operate according to their terms.[64] Further, section 104(f)(2) of the LIBOR Act expressly provides that nothing in the statute may be construed to alter or impair any LIBOR contract that contains fallback provisions that identify a benchmark replacement and are not LIBOR- or poll-based fallback provisions.[65] The Board believes these provisions of the statute unambiguously remove LIBOR contracts that identify a specific benchmark replacement (*e.g.,* the prime rate) from the scope of the LIBOR Act, even if these fallback provisions lack an express non-representativeness trigger.

However, consistent with the suggestion of some commenters, the Board is clarifying in the final rule how synthetic LIBOR would affect a LIBOR contract that includes fallback provisions authorizing a person to select a benchmark replacement only when LIBOR is unavailable. As noted in section IV.B, the final rule defines a determining person to include a person with a *contingent* authority, right, or obligation to determine a benchmark replacement. Under the final rule, a person who has the authority, right, or obligation to select a benchmark replacement when LIBOR is unavailable is a "determining person;" accordingly, such person has a statutory right under section 104(c)(1) and (c)(2) of the LIBOR Act to select the Board-selected benchmark replacement by the earlier of (i) the LIBOR replacement date and (ii) the latest date for selecting a benchmark replacement according to the terms of the LIBOR contract.[66] If the determining person does not select a benchmark replacement by the LIBOR replacement date,

[64] 12 U.S.C. 5801(b)(3).

[65] 12 U.S.C. 5803(f)(2).

[66] *See* 12 U.S.C. 5803(c)(1)–(2); section 253.3(c) of the final rule.

the applicable Board-selected benchmark replacement will be the benchmark replacement for the LIBOR contract under section 104(c)(3) of the LIBOR Act.[67]

D. Section 253.4 – Board-selected Benchmark Replacements

Section 253.4 identifies the Board-selected benchmark replacements for various types of contracts subject to the LIBOR Act. As indicated in the proposal, the Board agrees with the ARRC's observation that different benchmark replacements may be appropriate for derivative transactions and other transactions (hereafter, "cash transactions").[68] Therefore, the final rule identifies different benchmark replacements for derivative transactions and for different types of cash transactions, as under the proposal. Consistent with the LIBOR Act, all of the Board-selected benchmark replacements (i) are based upon SOFR and (ii) incorporate spread adjustments for each specified tenor of LIBOR.[69]

The spread adjustments specified in the LIBOR Act are intended to address certain differences between SOFR and LIBOR, including the fact that LIBOR is unsecured and therefore includes an element of bank credit risk which may cause it to be higher than SOFR.[70] LIBOR also may include term premia and reflect supply and demand conditions in wholesale unsecured funding markets, each of which may cause LIBOR to be higher than SOFR.[71] The LIBOR Act

[67] *See* 12 U.S.C. 5803(c)(3); section 253.3(a)(1)(iii) of the final rule. The Board notes that the statute does *not* accelerate a determining person's contingent right under a LIBOR contract to select a benchmark replacement other than the Board-selected benchmark replacement. *See* 12 U.S.C. 5803(c)(2).

[68] ARRC, *ARRC Best Practice Recommendations Related to Scope of Use of the Term Rate* (May 4, 2022), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Scope_of_Use.pdf.

[69] *See* section 253.4 of the final rule. *See also* 12 U.S.C. 5802–03.

[70] ARRC, *ARRC Consultation on Spread Adjustment Methodologies for Fallbacks in Cash Products Referencing USD LIBOR* 7 (Jan. 21, 2020), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Spread_Adjustment_Consultation.pdf

[71] *Id*.

prescribes static spread adjustments based on the tenor of LIBOR referenced in the contract (tenor spread adjustments)—specifically, 0.644 basis points (bps) (0.00644 percent) for overnight LIBOR, 11.448 bps (0.11448 percent) for one-month LIBOR, 26.161 bps (0.26161 percent) for three-month LIBOR, 42.826 bps (0.42826 percent) for six-month LIBOR, and 71.513 bps (0.71513 percent) for 12-month LIBOR.[72] For clarity, the final rule, like the proposed rule, reiterates these tenor spread adjustments in paragraph (c) of section 253.4.[73]

Two commenters requested that the final rule use different tenor spread adjustments than those specified in the LIBOR Act. As discussed, the LIBOR Act specifies tenor spread adjustments that shall be incorporated into the Board-selected benchmark replacements and does not authorize the Board to alter or modify those tenor spread adjustments. As a result, the final rule identifies Board-selected benchmark replacements that incorporate the tenor spread adjustments specified by the LIBOR Act, without modification.

Another commenter requested that the Board avoid selecting benchmark replacements that are overly complex to calculate or that have the potential to conflict with other Board-selected replacements and result in ambiguous or confusing scenarios. That commenter noted that the Board's selection of different benchmark replacements depending on contract type could create potential for hedging mismatch issues and urged the Board to consider issuing a broad range of alternative rates to allow individual firms flexibility to exercise their judgment in guarding

[72] *See* 12 U.S.C. 5802(20) (defining "tenor spread adjustment"). These spread adjustments were based on a methodology originally advanced by ISDA that uses the historical median over a five-year lookback period calculating the difference between USD LIBOR and SOFR. ARRC, *ARRC Announces Further Details Regarding Its Recommendation of Spread Adjustments for Cash Products* (June 30, 2020), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Recommendation_Spread_Adjustments_Cash_Products_Press_Release.pdf.

[73] Section 253.4(c) of the final rule.

against asset-liability mismatch issues while allowing them to rely on the LIBOR Act's protections for use of the Board-selected benchmark replacement.

As discussed in further detail below, and consistent with the ARRC's recommendations, the Board continues to believe that different contract types warrant different benchmark replacements. However, since a key purpose of the LIBOR Act and final rule is to replace LIBOR with the applicable Board-selected benchmark replacement by operation of law, the final rule aims to create a simple, clear, and manageable taxonomy with as few categories as possible. In addition, the Board believes this purpose of the final rule—to replace LIBOR automatically with a Board-selected benchmark replacement—can function only if there is a single Board-selected benchmark replacement applicable to any particular LIBOR contract. Therefore, the final rule does not identify a broad range of alternative rates as "Board-selected benchmark replacements" from which a firm could choose and avail itself of the LIBOR Act's protections for use of the Board-selected benchmark replacement.

1. Derivative transactions.

With respect to derivative transactions, the Board observed in the proposal that many derivative market participants have adhered to the ISDA 2020 IBOR Fallbacks Protocol (ISDA protocol) to amend their existing derivative transaction contracts to incorporate fallback provisions that would replace references to USD LIBOR with a SOFR-based rate.[74] Specifically, the ISDA protocol replaces references to USD LIBOR in adhering parties' derivative transaction contracts with a rate equal to (i) SOFR, compounded in arrears for the

[74] ISDA, ISDA 2020 IBOR Fallbacks Protocol (Oct. 23, 2020), https://assets.isda.org/media/3062e7b4/08268161-pdf.

appropriate tenor,[75] plus (ii) a stated spread adjustment based on the appropriate tenor (the "Fallback Rate (SOFR)"). The stated spread adjustments of the ISDA protocol are identical to the tenor spread adjustments specified in the LIBOR Act.[76] As of November 29, 2022, over 15,400 entities have adhered to the ISDA protocol to amend their derivative transactions.[77]

The Board proposed to select the Fallback Rate (SOFR) as the Board-selected benchmark replacement for derivative transactions. The Board noted that because derivatives markets already appear to reference SOFR compounded in arrears and there has been significant adherence to the ISDA protocol, it would be sensible to avoid disruption to these markets' efforts to transition away from referencing LIBOR.[78] The Board also observed that promoting use of a consistent approach to replace LIBOR references in derivative transactions should enhance financial stability and that the proposed approach was consistent with the recommendations of the ARRC.[79] The proposed rule defined a "derivative transaction" as "a contract that would

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[75] For purposes of this calculation, SOFR generally is compounded in arrears over an accrual period corresponding to the tenor of the LIBOR referenced in the covered contract. That compounded rate is annualized, and the day count convention is adjusted to match that of LIBOR. Bloomberg Professional Services, *Fact Sheet: IBOR Fallbacks* (Dec. 13, 2021), https://assets.bbhub.io/professional/sites/10/Factsheet-IBOR-Fallbacks_V4_Dec2021.pdf (cited in response to FAQ 3 of ISDA's "2020 IBOR Fallbacks Protocol (IBOR Fallbacks Protocol) FAQs"). *See also* Bloomberg Professional Services, *IBOR Fallback Rate Adjustments Rule Book* (Dec. 13, 2021), https://assets.bbhub.io/professional/sites/10/IBOR-Fallback-Rate-Adjustments-Rule-Book_V3_Dec2021.pdf (for complete discussion of the calculation).

[76] ISDA based its spread adjustments on a historical median over a five-year lookback period calculating the difference between USD LIBOR and SOFR. ARRC, *ARRC Announces Further Details Regarding Its Recommendation of Spread Adjustments for Cash Products* (June 30, 2020), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Recommendation_Spread_Adjustments_Cash_Products_Press_Release.pdf.

[77] *See* ISDA, *ISDA 20202 IBOR Fallbacks Protocol – List of Adhering Parties*, https://www.isda.org/protocol/isda-2020-ibor-fallbacks-protocol/adhering-parties (last visited Nov. 29, 2022).

[78] 87 FR 45268, 45274 (July 28, 2022).

[79] *Id*. *See also* ARRC, *ARRC Best Practice Recommendations Related to Scope of Use of the Term Rate* (May 4, 2022), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Scope_of_Use.pdf (recommending against the use of CME Term SOFR for the vast majority of the derivatives markets because these markets already reference SOFR compounded in arrears).

satisfy the criteria to be a 'Protocol Covered Document' under the ISDA protocol but for the fact that one or more parties to such contract is not an 'Adhering Party' as such term is used in the ISDA protocol, provided that, for purposes of this definition, 'Protocol Effective Date' as such term is used in the ISDA protocol means the LIBOR replacement date for the relevant covered contract."[80]

As noted in the proposal, ISDA has selected Bloomberg Index Services Limited (Bloomberg) to calculate and publish the Fallback Rate (SOFR) referenced in its ISDA protocol.[81] Similar to how IBA requires a license for certain uses of LIBOR,[82] the use of the Fallback Rate (SOFR) is subject to certain licensing or other usage terms imposed by Bloomberg.[83] Under its present usage terms, Bloomberg waives usage fees for users with less than $5 billion of total assets and charges one annual license fee for use of its IBOR fallbacks data.[84]

The Board did not receive comments regarding the proposed definition of "derivative transaction." Most commenters supported use of the Fallback Rate (SOFR) in the ISDA protocol

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[80] Section 253.2 of the proposed rule. "Protocol Covered Documents" include (i) master agreements incorporating certain ISDA definitions booklets (each a "covered ISDA definitions booklet"), including the 2006 ISDA Definitions and the 2000 ISDA Definitions, as published by ISDA, and referencing LIBOR or another specified IBOR (each a "covered master agreement"); (ii) confirmations that supplement, form part of and are subject to, or are otherwise governed by, a covered master agreement; and (iii) any ISDA credit support document, including the 1994 ISDA Credit Support Annex and the 2014 Standard Credit Support Annex, that incorporates a covered ISDA definition booklet and references LIBOR or another specified IBOR. ISDA, ISDA 2020 IBOR Fallbacks Protocol 14–16 (Oct. 23, 2020), https://assets.isda.org/media/3062e7b4/08268161-pdf.

[81] ISDA, *Bloomberg Selected as Fallback Adjustment Vendor* (July 31, 2019), https://www.isda.org/2019/07/31/bloomberg-selected-as-fallback-adjustment-vendor.

[82] IBA, *About*, https://www.theice.com/iba/about#licensing (last visited Nov. 29, 2022).

[83] *See* Bloomberg Prof'l Servs., *IBOR Fallback Usage Terms* (Sept. 27, 2021), https://assets.bbhub.io/professional/sites/27/ISDA-IBOR-Fallbacks-Web-Terms1.pdf.

[84] *Id.* The asset threshold of $5 billion applies to a user and its affiliates as one group and can be based on assets under management, the value of assets on its balance sheet, or another objective measure that Bloomberg may reasonably employ. *Id.*

as the Board-selected benchmark replacement for derivative transactions, but some suggested that the Board incorporate certain technical amendments in the final rule to match precisely the calculation of the Fallback Rate (SOFR) under the ISDA protocol. In particular, these commenters requested that the Board clarify that the Fallback Rate (SOFR) should be determined on the "derivative transaction fallback observation day," which essentially is defined in the ISDA Protocol as the day two payment business days prior to the payment date for the relevant calculation period.

One commenter stated that it would have preferred that the Board propose to select a rate equal to CME Term SOFR (discussed in detail in section IV.D.2) as its benchmark replacement for derivative transactions pursuant to the LIBOR Act. The commenter argued that CME Term SOFR would be the "most economically equivalent and simplest" replacement for LIBOR for end-users. However, that commenter acknowledged that such an approach would differ from the ARRC's recommendation and ultimately indicated that the Board should not make any changes from the ISDA protocol's rate given the timing of the rule.

Some commenters suggested that the Board identify separate benchmark replacements for certain categories of derivative contracts. One commenter requested that the final rule transition derivative transactions linked to certain securitizations to the same benchmark replacement as those of securities related to that securitization rather than the Fallback (SOFR) rate in order to avoid basis risk, potential ratings downgrades and defaults due to unplanned mismatches in cash flows, and potential disruptions arising from disputes over how excess cashflows and shortfalls should be treated. Another commenter requested that, where a derivative transaction is executed in connection with a cash asset-backed security and the cash security's terms are structured to reflect payments under the related derivative transaction, the

final rule should transition the derivative transaction to a benchmark replacement equal to a term SOFR rate so as to avoid circumventing the expectations of the parties and causing unexpected payment mismatches between the security and the derivative transaction. Similarly, another commenter recommended that the final rule allow a derivative transaction that specifically refers to the definition of LIBOR in an asset-backed security in order to hedge cashflows in the related securitization transaction to transition to the same benchmark replacement as the associated asset-backed security. This commenter acknowledged that it would not be practical or even advisable that every derivative transaction related to every cash security be transitioned in this way and that it is not operationally feasible for the parties to identify all such derivative transactions. As a result, the commenter suggested that the final rule acknowledge that, regardless of the original intent of the parties, there will be misalignments between many cash products and their related hedges because the Board-selected benchmark replacements for these products differ.

As noted, because a key purpose of the LIBOR Act and final rule is to replace LIBOR with the applicable Board-selected benchmark replacement by operation of law, the Board believes it is important for the final rule to create as simple, clear, and manageable a taxonomy as possible. This should allow parties to determine quickly and easily the Board-selected benchmark replacement to which a particular LIBOR contract will transition in the absence of fallback provisions identifying either (i) a clear and practicable benchmark replacement or (ii) a determining person. The addition of new sub-categories of derivatives transactions would increase greatly the complexity of the rule and increase burden associated with determining the applicable Board-selected benchmark replacement for a given LIBOR contract.

The Board acknowledges that basis risk may arise to the extent that derivative transactions and related cash transactions transition to different Board-selected benchmark replacements; however, the parties typically involved in these types of derivative transactions frequently manage basis risk and other hedging-related risk in the ordinary course of business. In addition, nothing in the LIBOR Act or final rule prevents parties to LIBOR contracts from agreeing to transition a particular LIBOR contract to a benchmark replacement that is more suitable to that contract than the Board-selected benchmark replacement.[85]

For all the foregoing reasons, the final rule selects the Fallback Rate (SOFR) in the ISDA protocol as the Board-selected benchmark replacement for derivative transactions. In response to comments, the final rule includes certain technical amendments to ensure that the calculation of the Fallback Rate (SOFR) under the final rule matches precisely the manner in which that rate is calculated in the ISDA protocol. In particular, the final rule defines "derivative transaction fallback observation day" in the same way the term is defined in the ISDA protocol and incorporates additional technical related to the calculation of the Fallback Rate (SOFR). Incorporation of this term, together with the provision in section 253.3(d)(3) indicating that contractual provisions referencing LIBOR or any LIBOR value prior to the LIBOR replacement date (including any provision requiring a person to look back to a LIBOR value as of a date preceding the LIBOR replacement date) remain unaffected, aligns the Board-selected benchmark replacement in the final rule with the calculation of the Fallback Rate (SOFR) in the ISDA protocol.

[85] *See*, *e.g.*, section 235.3(b)(1) of the final rule (providing that the rule does not apply to "[a]ny LIBOR contract that the parties have agreed in writing shall not be subject to the Adjustable Interest Rate (LIBOR) Act").

2. Cash transactions.

Under the proposed rule, references to overnight LIBOR in cash transactions would be replaced with SOFR plus a spread adjustment specified in the LIBOR Act,[86] consistent with the ARRC's recommendations.[87] Similarly, consistent with the ARRC's recommendations,[88] references to one-, three-, six-, or 12-month LIBOR in cash transactions generally would have been replaced with the comparable tenor CME Term SOFR rate plus the spread adjustment specified LIBOR Act.[89] As described further below, however, the Board proposed different Board-selected benchmark replacements for certain cash transactions involving entities regulated by the Federal Housing Finance Agency (FHFA).[90]

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[86] Sections 253.4(b)(1)(i), (b)(2)(i)(A), (b)(2)(ii)(A), (b)(3)(i) of the proposed rule. As described further below, for one year following the LIBOR replacement date, the spread adjustment specified for cash transactions that are consumer loans will differ from the spread adjustment for LIBOR contracts that are not consumer loans.

[87] *See* ARRC, *ARRC Best Practice Recommendations Related to Scope of Use of the Term Rate* (May 4, 2022), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Scope_of_Use.pdf.

[88] ARRC, *ARRC Formally Recommends Term SOFR* (July 29, 2021), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Press_Release_Term_SOFR.pdf. The ARRC made its recommendation after considering, among other things: (i) the fact that CME Group's term rates were rooted in a robust and sustainable base of derivative transactions over time; (ii) the rates' limited scope of use that should support their stability over time; (iii) continued growth in overnight SOFR-linked derivatives volumes; (iv) visible progress to deepen SOFR derivative transactions' liquidity; and (v) visible growth in offerings of cash transactions linked to averages of SOFR. *Id*. For similar reasons, the Board believes that the forward-looking SOFR term rates administered by CME Group and published in one-, three-, six-, and 12-month tenors generally would be an appropriate basis for a benchmark replacement for one-, three-, six-, and 12-month LIBOR, respectively.

[89] Sections 253.4(b)(1)(ii), (b)(2)(i)(B), and (b)(2)(ii)(B) of the proposed rule. CME Term SOFR is a forward-looking term rate based on SOFR administered by CME Group Benchmark Administration, Ltd. (CME Group). These forward-looking SOFR term rates are calculated by first projecting a possible path of overnight rates that is consistent with the observable averages implied by SOFR-based derivative contracts and then creating averages over standard tenors of that projected path of overnight rates. In projecting the path of overnight rates, CME Group uses a combination of one-month and three-month SOFR futures contracts to ensure that as many data points as possible are used to calculate the term structure. CME Grp., *CME Term SOFR Reference Rates Benchmark Methodology* (May 9, 2022), https://www.cmegroup.com/market-data/files/cme-term-sofr-reference-rates-benchmark-methodology.pdf.

[90] Section 253.4(b)(3)(ii) of the proposed rule.

CME Group calculates and publishes CME Term SOFR in one-, three-, six-, and 12-month tenors.[91] Similar to how IBA requires a license for certain uses of LIBOR,[92] the use of CME Term SOFR is subject to certain licensing or other usage terms imposed by CME Group.[93] One commenter, whose letter appeared to focus on cash transactions, requested that the Board make every effort to ensure that Board-selected benchmark replacements be made available at low or no cost to credit unions and other not-for-profit institutions. As noted by the commenter, under its present usage terms, an end user seeking only to enter into a transaction does not need a license from CME Group.[94] In addition, CME Group has waived fees for users of CME Term SOFR for cash transactions through 2026.[95] Based on these facts, the Board believes that Board-selected benchmark replacements that are based on CME Term SOFR would be made available to market participants and end users at low to no cost.

Similar to the proposal, the final rule generally replaces references to overnight LIBOR in cash transactions with SOFR plus a spread adjustment specified in the LIBOR Act.[96] With respect to references to one-, three-, six-, or 12-month LIBOR in cash transactions other than those in the specific categories listed below, the final rule generally identifies as the Board-

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[91] CME Grp., *CME Term SOFR Rates*, https://www.cmegroup.com/market-data/cme-group-benchmark-administration/term-sofr.html (last visited Nov. 29, 2022).

[92] IBA, *About*, https://www.theice.com/iba/about#licensing (last visited Nov. 29, 2022).

[93] *See* CME Grp., *CME Data Terms of Use*, https://www.cmegroup.com/trading/market-data-explanation-disclaimer.html (last visited Nov. 29, 2022); CME Grp., *CME Term SOFR Reference Rates – Frequently Asked Questions*, FAQ 8–10 (Apr. 19, 2022), https://www.cmegroup.com/articles/faqs/cme-term-sofr-reference-rates.html.

[94] CME Group defines an "end user" as an individual or entity that is a counterparty or guarantor to the applicable cash transaction or derivative transaction with the licensee of CME Term SOFR. CME Grp., *CME Term SOFR Reference Rates – Frequently Asked Questions*, FAQ 10 (Apr. 19, 2022), https://www.cmegroup.com/articles/faqs/cme-term-sofr-reference-rates.html.

[95] CME Grp., *CME Group Benchmark Fee List* (Dec. 2021), https://www.cmegroup.com/files/download/benchmark-data-fee-list.pdf.

[96] Sections 253.4(b)(1)(i), (b)(2)(i)(A), (b)(2)(ii)(A), and (b)(3)(i)(A) of the final rule.

selected benchmark replacement the corresponding tenor of CME Term SOFR plus a spread adjustment specified in the LIBOR Act.[97] As discussed further below, for one year following the LIBOR replacement date, the spread adjustment for cash transactions that are consumer loans will differ from the spread adjustment for LIBOR contracts that are not consumer loans.

The final rule identifies separate Board-selected benchmark replacements for two categories of cash transactions: (i) similar to the proposal, certain cash transactions involving entities regulated by FHFA; and (ii) Federal Family Education Loan Program (FFELP) asset-backed securitizations (ABS). These categories of cash transactions are discussed in more detail below.

a. Cash transactions that are consumer loans.

Under the LIBOR Act, any Board-selected benchmark replacement applicable to consumer loans shall, for the one-year period beginning on the LIBOR replacement date, incorporate an amount that modifies the otherwise-applicable tenor spread adjustment specified in the LIBOR Act.[98] Specifically, the LIBOR Act requires that, during the one-year period, the Board-selected benchmark replacement for consumer loans incorporate an amount that transitions linearly for each business day during that period from (i) the difference between the Board-selected benchmark replacement and the corresponding LIBOR tenor determined as of the day immediately before the LIBOR replacement date to (ii) the applicable tenor spread adjustment specified in the LIBOR Act (the transition tenor spread adjustment).[99] This transition tenor spread adjustment is intended to prevent consumer borrowers from experiencing

[97] Section 253.4(b)(1)(ii), (b)(2)(i)(B), and (b)(2)(ii)(B) of the final rule.

[98] 12 U.S.C. 5803(e)(2). *See* section 253.2 of the final rule for the definition of "consumer loan."

[99] 12 U.S.C. 5803(e)(2).

significant, unexpected shifts in borrowing rates on and immediately following the LIBOR replacement date.

The proposed rule generally identified the same Board-selected benchmark replacements for consumer loans as for other cash transactions (i.e. SOFR for overnight LIBOR and CME Term SOFR for one-, three-, six-, and 12-month LIBOR).[100] Consistent with the LIBOR Act, however, the proposed rule provided that, for the one-year period beginning on the LIBOR replacement date, the Board-selected benchmark replacements for consumer loans would incorporate the applicable transition tenor spread adjustment.[101]

Refinitiv Limited has stated it will publish and provide rates for consumer loans that sum (i) CME Term SOFR and (ii) the transition tenor spread adjustment (for the one-year period beginning on the LIBOR replacement date) or the tenor spread adjustment specified in the LIBOR Act (after that one-year period), consistent with the proposed rule and the recommendations of the ARRC.[102] Refinitiv identifies these rates as "USD IBOR Cash Fallbacks" for "Consumer" products. For clarity, and particularly because calculation of the

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[100] Section 253.4(b)(2) of the proposed rule.

[101] Section 253.2(b)(2)(i) of the proposed rule.

[102] The ARRC selected Refinitiv Limited to publish its recommended spread adjustments and spread-adjusted rates for cash products. ARRC, *ARRC Announces Refinitiv as Publisher of its Spread Adjustment Rates for Cash Products* (Mar. 17, 2021), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/20210317-press-release-Spread-Adjustment-Vendor-Refinitiv.pdf. With respect to the transition tenor spread adjustment, Refinitiv has stated it will incorporate a two-week lookback period for SOFR (from June 19, 2023, through June 30, 2023) in determining the difference between the Board-selected benchmark replacement and the corresponding LIBOR tenor as of the day before the LIBOR replacement date. Refinitiv Benchmark Servs. (UK) Ltd., *USD IBOR Institutional Cash Fallbacks Benchmark, USD IBOR Consumer Cash Fallbacks (1 Week, 2 Months) Benchmark, USD IBOR Consumer Cash Fallbacks (1, 3, 6 Months) Prototype Methodology* 11 (Jan. 3, 2022), https://www.refinitiv.com/content/dam/marketing/en_us/documents/methodology/refinitiv-usd-ibor-cash-fallbacks-methodology.pdf. The Board believes this method of determining the difference between the Board-selected benchmark replacement and the corresponding LIBOR tenor as of June 30, 2023, is consistent with the provision in the LIBOR Act.

transition tenor spread adjustment applicable to consumer loans during the one-year period beginning on the LIBOR replacement date may be complex, the proposed rule indicated that these rates from Refinitiv would be deemed equal to the Board-selected benchmark replacement in the proposed rule.[103] Use of these "USD IBOR Cash Fallbacks" for "Consumer" products may be subject to certain licensing or other usage terms imposed by Refinitiv Limited.

The Board did not receive comments concerning the proposed Board-selected benchmark replacement for cash transactions that are consumer loans. As a result, the final rule generally retains these provisions as proposed, including a provision deeming the "USD IBOR Cash Fallbacks" for "Consumer" products published by Refinitiv equal to the Board-selected benchmark replacement for these transactions.[104]

b. Cash transactions involving certain entities regulated by FHFA.

Since 2020, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation— government-sponsored enterprises (GSEs) that are regulated by FHFA—have transitioned to using the 30-calendar-day compounded average of SOFR (30-day Average SOFR), as published by the FRBNY,[105] in their newly issued multifamily loans and other structured products. Consistent with those GSEs' current practices, the proposed rule

[103] *See* section 253.4(b)(2)(iii) of the proposed rule. Refinitiv also has stated it will publish "USD IBOR Cash Fallbacks" for "Institutional" products. These rates are expected to be consistent with the proposed rule's benchmark replacement for cash transactions that are not consumer loans. The Board observes that parties to cash transactions that are not consumer loans should be able to compute easily the proposed benchmark replacement and, if needed, verify that any vendor's reported rate (including that of Refinitiv) is consistent with that proposed replacement such that no provision similar to section 253.4(b)(2)(iii) is needed for these transactions.

[104] *See* section 253.4(b)(2) of the final rule.

[105] Fed. Res. Bk. of NY, *Additional Information about Reference Rates Administered by the New York Fed*, https://www.newyorkfed.org/markets/reference-rates/additional-information-about-reference-rates#sofr_ai_calculation_methodology (last visited Nov. 29, 2022) (detailing the calculation methodology for the SOFR averages and index).

would have selected as the benchmark replacement for LIBOR contracts involving those entities (i) in place of overnight LIBOR, SOFR, or in place of one-, three-, six, or 12-month tenors of LIBOR, 30-day Average SOFR; plus (ii) the applicable tenor spread adjustment specified in the LIBOR Act.[106] Selection of this proposed benchmark replacement was expected to enhance liquidity for both newly issued and legacy LIBOR-based products issued by those GSEs.[107]

The proposed rule would have defined a "government-sponsored enterprise (GSE)," consistent with its definition under the Board's capital rule, 12 CFR 217.2, as "an entity established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government." [108] The proposal would have defined the LIBOR contracts involving the GSEs that would use this benchmark replacement—termed a "covered GSE contract"—as "a covered contract for which a GSE is identified as a party in the transaction documents and that is (i) a commercial or multifamily mortgage loan, (ii) a commercial or multifamily mortgage-backed security, (iii) a collateralized mortgage obligation, (iv) a credit risk transfer transaction, or (v) a Federal Home Loan Bank advance."[109]

Multiple commenters opposed the proposed rule's definitions of "GSE" and "covered GSE contract" as overly broad in light of the Board's stated intent to capture contracts involving entities regulated by FHFA.[110] One commenter suggested that residential mortgage pass-through

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[106] *See* section 253.4(b)(3) of the proposed rule.

[107] 87 FR 45268, 45276 (July 28, 2022).

[108] Section 253.2 of the proposed rule.

[109] *Id.*

[110] One of these commenters would prefer that LIBOR contracts involving the Federal Agricultural Mortgage Corporation (Farmer Mac) that reference one-, three-, six-, or 12-month LIBOR transition to the corresponding tenor of CME Term SOFR plus the applicable tenor spread adjustment specified in the

certificates issued by the Federal Home Loan Mortgage Corporation should not be considered a "covered GSE contract" and should instead be considered a cash transaction that would transition to CME Term SOFR. Other commenters suggested that the Board-selected benchmark replacement for covered GSE contracts be a term SOFR rate rather than 30-day Average SOFR for several reasons: (i) that the ARRC did not recommend 30-day Average SOFR for contracts involving GSEs, (ii) that use of 30-day Average SOFR in advance could create volatility in earnings during periods of monetary policy activity; and (iii) that use of a term SOFR rate would avoid bifurcating the market and would be consistent with public statements made by the GSEs, including GSEs not regulated by FHFA. Another commenter—FHFA—generally supported the Board's proposal but suggested certain technical amendments to the definition of "GSE-covered contract."

The Board continues to believe that, with the exception of Federal Home Loan Bank advances, which are discussed further below, it is appropriate to replace references to one-, three-, six, or 12-month LIBOR in contracts involving entities regulated by FHFA with 30-day Average SOFR plus the applicable tenor spread adjustment specified in the LIBOR Act. In response to comments suggesting that the "GSE" definition was too broad and would cover entities that are not regulated by FHFA, the final rule replaces the terms "GSE" and "covered GSE contract" with "FHFA-regulated entity" and "FHFA-regulated-entity contract". "FHFA-regulated entity" is defined as having the same meaning as "regulated entity" in 12 U.S.C. 4502(20).[111] "FHFA-regulated-entity contract" is defined to mean "a LIBOR contract that is a

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LIBOR Act. This commenter noted that Farmer Mac does not use 30-day Average SOFR as a benchmark for its loan products or securities.

[111] Section 253.2 of the final rule. Under 12 U.S.C. 4502(20), the term "regulated entity" means "(A) the Federal National Mortgage Association and any affiliate thereof; (B) the Federal Home Loan Mortgage Corporation and any affiliate thereof; and (C) any Federal Home Loan Bank."

commercial or multifamily mortgage loan that has been purchased or guaranteed, in whole or in part, by an FHFA-regulated-entity, or for which an FHFA-regulated entity is identified as a party in the transaction documents, and that is (i) a commercial or multifamily mortgage-backed security (other than a security backed by consumer loans), (ii) a collateralized mortgage obligation, (iii) a credit risk transfer transaction, or (iv) a Federal Home Loan Bank advance." These narrower definitions more closely track SOFR contracts executed by FHFA-regulated entities without impacting LIBOR contracts of other GSEs.

Similar to the proposal, the final rule identifies as the Board-selected benchmark replacement for FHFA-regulated-entity contracts other than Federal Home Loan Bank advances (i) in place of overnight LIBOR, SOFR, or in place of one-, three-, six-, or 12-month tenors of LIBOR, 30-day Average SOFR; plus (ii) the applicable tenor spread adjustment specified in the LIBOR Act.[112] Having consulted with FHFA, the Board believes that the final rule's Board-selected benchmark replacement rate should enhance liquidity for both newly issued and legacy LIBOR-based products issued by FHFA-regulated entities. In addition, concerning a commenter's request that any Board-selected benchmark replacement for a cash transaction be made available at low or no cost to credit unions and other not-for-profit institutions, the Board notes that 30-day Average SOFR is published by the Federal Reserve Bank of New York and available for free.

Federal Home Loan Bank advances. As noted, the proposed rule would have included Federal Home Loan Bank advances as "covered GSE contracts" for which references to one-, three-, six-, or 12-month tenors of LIBOR would be replaced with 30-day Average SOFR plus

[112] *See* section 253.4(b)(3) of the final rule; *see also* section 253.2 of the final rule (defining "30-day Average SOFR").

the applicable tenor spread adjustment specified in the LIBOR Act. One commenter recommended that references to one-, three-, six-, or 12-month tenors of LIBOR in Federal Home Loan Bank advances be replaced with a rate based on daily average SOFR in arrears matching the Fallback Rate (SOFR) in the ISDA protocol, and not with a rate based on 30-day Average SOFR. This commenter noted that, because the Federal Home Loan Banks utilize SOFR in-arrears indices for their established advance products, selection of the Fallback Rate (SOFR) in the ISDA protocol would align with the current practices of the Federal Home Loan Banks with respect to their advances.[113] FHFA, the supervisor of the Federal Home Loan Banks, supported selection of the Fallback Rate (SOFR) in the ISDA protocol for an FHFA-regulated-entity contract that is a Federal Home Loan Bank advance.

Having consulted with FHFA, the Board believes it would be appropriate to identify a separate benchmark replacement for FHFA-regulated-entity contracts that are Federal Home Loan Bank advances so as to align the benchmark used in legacy contracts that are Federal Home Loan Bank advances with the current practices of the Federal Home Loan Banks. Therefore, the final rule identifies the Board-selected benchmark replacement for an FHFA-regulated-entity contract that is a Federal Home Loan Bank advance as the "Fallback Rate (SOFR)" in the ISDA protocol, as calculated under the ISDA protocol.[114]

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[113] This commenter noted also that, since the Federal Home Loan Banks use the same rate for their funding and hedging programs, selection of the Fallback Rate (SOFR) in the ISDA protocol would have the added benefit of aligning its funding costs where such funding has been created using derivative transactions with its lending rate for advances.

[114] Section 253.4(b)(3) of the final rule. Concerning a commenter's request that any Board-selected benchmark replacement for a cash transaction be made available at low or no cost to credit unions and other not-for-profit institutions, the Board notes that, although use of the Fallback Rate (SOFR) is subject to certain licensing or other usage terms imposed by Bloomberg, Bloomberg presently waives usage fees for users with less than $5 billion of total assets and charges one annual license fee for use of its IBOR fallbacks data. *See* Bloomberg Prof'l Servs., *IBOR Fallback Usage Terms* (Sept. 27, 2021), https://assets.bbhub.io/professional/sites/27/ISDA-IBOR-Fallbacks-Web-Terms1.pdf. The asset

FFELP ABS. One group of commenters recommended that the Board identify a separate benchmark replacement for asset-backed securities that are predominantly secured by loans made under the FFELP that aligns with the LIBOR Act's amendments to FFELP special allowance payments related to those loans. Specifically, section 109 of the LIBOR Act amended the Higher Education Act of 1965 to indicate that, among other things, in instances where one-month LIBOR ceases or is non-representative, special allowance payments shall be calculated using 30-day Average SOFR rates.[115] The Board did not receive any comments recommending against identification of a separate benchmark replacement for these contracts.

The Board believes it would be appropriate to identify a separate benchmark replacement for any asset-backed security for which more than 50 percent of the collateral pool consists of FFELP loans, as reported in the most recent servicer report available on the LIBOR replacement date (defined in the final rule as "Federal Family Education Loan Program (FFELP) asset-backed securitizations (ABS)").[116] The Board understands that outstanding FFELP ABS do not reference overnight LIBOR; therefore, the final rule identifies benchmark replacements for one-, three-, six-, and 12-month LIBOR only.[117] Consistent with the comment received, the final rule identifies the benchmark replacement for a FFELP ABS as follows: (i) one-month LIBOR will be replaced with 30-day Average SOFR plus the tenor spread adjustment specified in the LIBOR Act; (ii) three-month LIBOR will be replaced with 90-day Average SOFR plus the tenor spread adjustment specified in the LIBOR Act; and (iii) six- or 12-month LIBOR will be replaced with

threshold of $5 billion applies to a user and its affiliates as one group and can be based on assets under management, the value of assets on its balance sheet, or another objective measure that Bloomberg may reasonably employ. *Id*.

[115] 20 U.S.C. 1087-1(b)(2)(I)(viii).

[116] *See* section 253.2 of the final rule.

[117] *See* section 253.4(b)(4) of the final rule.

30-day Average SOFR plus the applicable tenor spread adjustment specified in the LIBOR Act.[118]

E. Section 253.5 – Benchmark Replacement Conforming Changes

The LIBOR Act authorizes the Board to require any additional technical, administrative, or operational changes, alterations, or modifications to LIBOR contracts based on a determination that such changes, alterations, or modifications would address one or more issues affecting the implementation, administration, and calculation of the Board-selected benchmark replacement in LIBOR contracts (conforming changes).[119] The Board's proposed rule did not require any conforming changes, since it did not appear any additional conforming changes would be needed for successful implementation of the Board-selected benchmark replacements identified in the proposed rule. However, under the proposed rule, the Board reserved the authority, in its discretion, to require any additional conforming changes, by regulation or order.[120]

For clarity, the proposed rule also indicated that, with respect to a LIBOR contract that is not a consumer loan, a calculating person may make any additional technical, administrative, or operational changes, alterations or modifications that, in that person's reasonable judgment, would be necessary or appropriate to permit the implementation, administration, and calculation of the Board-selected benchmark replacement under or with respect to a LIBOR contract after giving due consideration to any changes, alterations, or modifications otherwise required by the

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[118] *Id*. Concerning a commenter's request that any Board-selected benchmark replacement for a cash transaction be made available at low or no cost to credit unions and other not-for-profit institutions, the Board notes that 30-day Average SOFR and 90-day Average SOFR are published by the Federal Reserve Bank of New York and available for free.

[119] 12 U.S.C. 5803(e).

[120] Section 253.5(a)(1) of the proposed rule.

Board under the proposed rule.[121] This language in the proposed rule mirrored sections 103(4)(B) and 104(d) of the LIBOR Act.[122]

The Board did not receive any comments concerning the proposed rule's provisions mirroring sections 103(4)(B) and 104(d) of the LIBOR Act. Some commenters agreed with the Board that no additional conforming changes were necessary. One commenter urged the Board to consider whether some conforming changes may be appropriate for complex consumer loans, since the LIBOR Act does not provide for a calculating person to make additional conforming changes for such loans. Another commenter recommended the Board include as a conforming change a provision that, should the Board-selected benchmark replacement not be published on a given day, then the prior day's publication of the Board-selected benchmark replacement should be used. Several commenters requested conforming changes addressing provisions in LIBOR contracts that (i) specify a particular source where a LIBOR rate may be obtained (e.g., "LIBOR as published in *The Wall Street Journal*"), (ii) specify a LIBOR rate in effect as of a particular time of day, (iii) require averaging of LIBOR over a period of time that spans the LIBOR replacement date, and (iv) define "business day" in a manner differently from the proposed rule.[123]

The final rule, like the proposed rule, includes provisions mirroring the language in sections 103(4) and 104(d) of the LIBOR Act, including the Board's ability to, in its discretion,

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[121] Section 253.5(a)(2) of the proposed rule.

[122] *See* 12 U.S.C. 5802(4)(B), 5803(d).

[123] As discussed in section IV.C, some commenters also requested conforming changes addressing provisions in LIBOR contracts that (i) specify rounding conventions, to the extent a particular source for the Board-selected benchmark replacement provides a different number of decimal places; and (ii) specify a lookback period that straddles the LIBOR replacement date. In the Board's view, it is clearer and more reasonable to indicate that these contractual provisions are unaffected by the final rule, rather than to include these as conforming changes.

publish additional benchmark replacement conforming changes, by regulation or order, and a calculating person's ability to make certain conforming changes with respect to a LIBOR contract that is not a consumer loan, consistent with the LIBOR Act.[124] In response to comments, the final rule also specifies certain conforming changes and, consistent with the LIBOR Act, indicates that these conforming changes shall become an integral part of any LIBOR contract for which the Board-selected benchmark replacement replaces the contract's references to LIBOR.[125]

First, the final rule replaces references in a LIBOR contract to a specified source for LIBOR (such as a particular newspaper, website, or screen) with the publication of the applicable Board-selected benchmark replacement by either the relevant benchmark administrator for the applicable Board-selected benchmark replacement or any third party authorized by the relevant benchmark administrator to publish the applicable Board-selected benchmark replacement.[126] Second, the final rule replaces references in a LIBOR contract to a particular time of day for determining LIBOR (such as 11:00 a.m. London time) with the standard publication time for the applicable Board-selected benchmark, as established by the relevant benchmark administrator.[127] Third, the final rule modifies any provision of a LIBOR contract requiring use of a combination (such as an average) of LIBOR values over a period of time that spans the LIBOR replacement to provide that the combination shall be calculated consistent with that contractual provision using (i) the applicable LIBOR for any date prior to the LIBOR replacement date and (ii) the applicable Board-selected benchmark replacement for any date on or following the LIBOR

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[124] Section 253.5(a) of the final rule.

[125] Section 253.5(a)–(b) of the final rule.

[126] Section 253.5(b)(1) of the final rule.

[127] Section 253.5(b)(2) of the final rule.

replacement date, respectively.[128] These conforming changes provide clarifications expressly requested by commenters.

The final rule also provides, subject to sections 253.4(a) and 253.4(b)(3)(ii) of the final rule, that to the extent a Board-selected benchmark replacement is not available or published on a particular day indicated in the LIBOR contract as the determination date, the most recently available publication of the Board-selected benchmark replacement will apply.[129] The Board believes this provision, together with sections 253.4(a) and 253.4(b)(3)(ii) of the final rule, addresses more directly an issue raised by a commenter concerning a provision of a LIBOR contract that defines "business day" differently from the final rule. A different definition of "business day" in the LIBOR contract could result in unavailability of the Board-selected benchmark replacement on the contractual determination date. This conforming change in the final rule would address that issue by directing parties to use the most recently available publication of the Board-selected benchmark replacement in the event the Board-selected benchmark replacement is not available or published on a particular day indicated in the LIBOR contract as the determination date, without affecting other provisions in the LIBOR contract that may refer to "business day" for a different purpose.[130]

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[128] Section 253.5(b)(3) of the final rule.

[129] Section 253.5(b)(4) of the final rule.

[130] Another commenter initially requested that the Board permit the Federal Home Loan Banks to identify conforming changes for Federal Home Loan Bank advances related to terms such as determination dates, reset dates, payment dates, calculation periods, and adjustment spreads to better reflect the economics of replacing LIBOR with its preferred benchmark replacement for Federal Home Loan Bank advances. The Board notes that, for LIBOR contracts other than consumer loans, the LIBOR Act and the final rule expressly authorize a calculating person to identify benchmark replacement conforming changes. Additionally, consistent with a subsequent suggestion from the same commenter, the final rule identifies the Fallback Rate (SOFR) as the Board-selected benchmark replacement for Federal Home Loan Bank advances.

F. Section 253.6 – Preemption

As noted, section 107 of the LIBOR Act expressly preempts any provision of state or local law relating to the selection or use of a benchmark replacement or related conforming changes, or expressly limiting the manner of calculating interest (including the compounding of interest) as that provision applies to the selection or use of a Board-selected benchmark replacement or benchmark replacement conforming changes.[131] For clarity, section 253.6 of the proposed rule referenced and repeated the statutory language concerning preemption of such state or local law, statute, rule, regulation, or standard by a final rule issued by the Board pursuant to the LIBOR Act.

The Board did not receive any comments on this section of the proposed rule. Therefore, the final rule retains this section as proposed.[132]

G. Section 253.7 – Continuity of Contract and Safe Harbor

In its proposal, the Board noted that the LIBOR Act provides, among other things, certain statutory protections enumerated in section 105 related to the selection and use of the Board-selected benchmark replacement.[133] The Board viewed these provisions as self-executing and, therefore, did not believe it was necessary to include any provisions in the proposed rule reiterating these sections of the LIBOR Act. However, the Board invited comment on whether the Board should incorporate into the regulation the statutory protections in section 105 of the LIBOR Act.

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[131] 12 U.S.C. 5806.

[132] Section 253.6 of the final rule.

[133] 87 FR 45268, 45271 (July 28, 2022).

Some commenters recommended that the final rule incorporate the statutory protections of section 105 of the LIBOR Act. Another commenter suggested that the Board expressly acknowledge in the final rule that section 105 of the LIBOR Act is self-executing and that nothing in the rule is intended to alter or modify the scope of those protections.

Some commenters requested that the final rule expressly state, consistent with section 104(f)(6) of the LIBOR Act, that nothing in the final rule would alter or impair the rights or obligations of any person, or the authorities of any agency, under Federal consumer financial law, as defined in 12 U.S.C. 5481. One commenter suggested in the alternative that section 104(f)(6) of the LIBOR Act be expressly incorporated into the final rule. Consistent with the LIBOR Act, the Board affirms that the final rule does not affect any requirements imposed by any provision of Federal consumer financial law, as defined in 12 U.S.C. 5481.

Having considered all of these comments, the Board's final rule includes a new section expressly stating that the provisions of section 105(a)–(d) of the LIBOR Act shall apply to any LIBOR contract for which the Board-selected benchmark replacement becomes the benchmark replacement pursuant to section 253.3(a) or (c) of the final rule.[134] The section separately states that nothing in the final rule is intended to alter or modify the availability or effect of the provisions of section 105(e) of the LIBOR Act.[135]

V. Regulatory Analyses

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires an agency to consider whether its rules will have a significant economic impact on a substantial number of

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[134] Section 253.7(a) of the final rule.

[135] Section 253.7(b) of the final rule.

small entities. Under the RFA, in connection with a final rule, an agency is generally required to publish a final regulatory flexibility analysis (FRFA), unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes the factual basis supporting such certification. For the reasons described below, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

LIBOR is used in contracts subject to the LIBOR Act across all industries, and the Board does not believe that it is feasible to provide an estimate of the number of small entities to which the final rule will apply.[136] Given the broad coverage of the LIBOR Act, the Board expects that the number of small entities to which the final rule will apply could be significant for one or more classes of small entities.[137] However, for the reasons described below, the Board does not believe that the rule will have a significant economic impact on a substantial number of small entities.

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[136] The Board generally uses the industry-specific size standards adopted by the Small Business Administration for purposes of estimating the number of small entities to which a proposed rule would apply. *See* 13 CFR 121.201. As the Board stated in the initial regulatory flexibility analysis (IRFA) that was published with the proposed rule, parties to contacts subject to the LIBOR Act may include firms of any size and in any industry, and the Board does not believe that it has sufficient data to provide a reasonable estimate of the number of small entities to which the final rule would apply.

[137] The Board received one comment letter in response to the IRFA that asked the Board to consider conducting a survey of a representative sample of small businesses to determine whether and how the rule will affect them. The Board has considered this commenter's request, but in light of (i) the practical challenges associated with assembling a representative sample of small businesses across all sectors of the U.S. economy, (ii) the statutory deadline within which the Board must promulgate implementing regulations, and (iii) the Board's conclusion that the final rule will not have a significant economic impact on a substantial number of small entities, the Board has declined to follow this commenter's suggestion. The same commenter additionally recommend that the Board conduct a policy analysis illustrating the effect of the rule on small businesses, including an analysis of alternatives, and stated that the Board should grant an exemption from the rule for small businesses if the Board cannot determine how the rule will affect them. The LIBOR Act does not authorize the Board to grant exemptions from the LIBOR Act or the final rule. Elsewhere in this preamble, the Board has discussed the effect of the final rule on parties to LIBOR contracts and explained its reasoning in respect of the limited areas where the Board has discretion to adopt alternatives.

As the Board stated in the IRFA that was published with the proposal, although section 110 of the LIBOR Act directs the Board to promulgate regulations to carry out the LIBOR Act, the Board's discretion under the LIBOR Act is limited to a small number of areas: (i) selecting SOFR-based benchmark replacements, (ii) determining any benchmark replacement conforming changes, and (iii) determining the LIBOR replacement date (in the event that any LIBOR tenor ceases or becomes nonrepresentative prior to the planned LIBOR cessation date).

With respect to Board-selected benchmark replacements, the final rule establishes Board-selected benchmark replacements for six categories of LIBOR contracts.[138] As required by the LIBOR Act, all of these Board-selected benchmark replacements are based on SOFR. Although the Board recognizes that there are some differences between the different versions of SOFR that the Board could have selected as a benchmark replacement for LIBOR, the Board believes that there is a basic economic equivalence between all SOFR-based benchmark replacements. This basic economic equivalence is reflected in the LIBOR Act itself, which requires the Board to adjust any Board-selected benchmark replacement to include the same statutorily prescribed tenor spread adjustments (except for the transition tenor spread adjustment for consumer loans). In addition, the Board was guided by voluntary market practices in selecting the Board-selected benchmark replacement for each category of LIBOR contracts. For example, the Board selected CME Term SOFR as the Board-selected benchmark replacement for most cash transactions in large part because the loan market has already transitioned from LIBOR to Term SOFR on a

[138] Specifically, as provided in section 253.4 of the final rule, the Board has selected different benchmark replacements for (i) derivatives transactions ("Fallback Rate (SOFR)" in the ISDA protocol), (ii) FHFA-regulated-entity contracts other than Federal Home Loan Bank advances (30-day Average SOFR), (iii) FHFA-regulated-entity contracts that are Federal Home Loan Bank advances ("Fallback Rate (SOFR)" in the ISDA protocol), (iv) FFELP ABS (30-day Average SOFR and 90-day Average SOFR, as applicable), (v) consumer loans (CME Term SOFR), and (vi) all other transactions (*i.e.*, cash transactions) (CME Term SOFR).

voluntary basis. Thus, the Board has exercised its discretion to select SOFR-based benchmark replacements in a way that will minimize market disruption. Accordingly, the Board does not believe that the Board's selection of a particular Board-selected benchmark replacement over an alternative SOFR-based rate for a particular category of LIBOR contracts is economically material.

With respect to benchmark replacement conforming changes, the final rule identifies a small number of benchmark replacement conforming changes based on feedback from commenters. Specifically, as provided in section 253.5(b) of the final rule, the Board established benchmark replacement conforming changes related to (i) any reference to a specified source for LIBOR (such as a particular newspaper, website, or screen), (ii) any reference to a particular time of day for determining LIBOR, (iii) any provision of a LIBOR contract requiring the use of a combination of LIBOR values over a period of time that spans the LIBOR replacement date, and (iv) any provision of LIBOR contract specifying use of the most recently available publication of LIBOR for any day where LIBOR is not available or published. Because these benchmark replacement conforming changes are limited to technical, administrative changes to LIBOR contracts that facilitate the transition from LIBOR to the applicable Board-selected benchmark replacement, the Board does not believe that any of the benchmark replacement conforming changes will represent a material change to any LIBOR contract. To the contrary, the Board believes that these benchmark replacement conforming changes will provide clarity and reduce the possibility of disputes over the meaning of a LIBOR contract for which a Board-selected benchmark replacement becomes the benchmark replacement. Therefore, the Board believes that economic impact of these benchmark replacement conforming changes will be de minimis.

With respect to determining the LIBOR replacement date, the Board did not propose, and the final rule does not include, a determination that any LIBOR tenor will cease or become nonrepresentative prior to the first London banking day after June 30, 2023.

Beyond these three areas where the LIBOR Act expressly vests the Board with discretion, there is one additional aspect of the final rule in respect of which the Board has exercised discretion. Specifically, the Board in the final rule has interpreted the ambiguous statutory term "determining person" to include any person with sole authority, right, or obligation, including on a temporary basis, (as identified by the LIBOR contract or by the governing law of the LIBOR contract, as appropriate) to determine a benchmark replacement, *whether or not the person's authority, right or obligation is subject to any contingencies specified in the LIBOR contract or by the governing law of the LIBOR contract*. The Board's interpretation of "determining person" in the final rule does have implications for LIBOR contracts under the terms of which the determining person's authority would be triggered on or after the LIBOR replacement date (*i.e.*, LIBOR contracts where a determining person's contractual authority arises when LIBOR becomes unavailable or non-representative).

As discussed elsewhere in this preamble, section 104(c)(2) of the LIBOR Act creates a statutory right for a determining person to select the Board-selected benchmark replacement by the earlier of the LIBOR replacement date and the latest date for selecting a benchmark replacement according to the terms of the LIBOR contract, and the Board's interpretation of "determining person" clarifies that this statutory right is available to a determining person even if the determining person's contractual right to select a benchmark replacement is subject to any contingencies that have not yet occurred. If the determining person does not avail itself of this statutory right, then the LIBOR contract would be regarded on the LIBOR replacement date as a

LIBOR contract for which the determining person has not selected a benchmark replacement, and thus, the applicable Board-selected benchmark replacement shall be the benchmark replacement for the LIBOR contract on and after the LIBOR replacement date under section 104(c)(3) of the LIBOR Act.[139]

Alternatively, the Board could have construed "determining person" to include only persons whose right to select a benchmark replacement has already been triggered.[140] Under this alternative interpretation, where a LIBOR contract authorizes a person to select a benchmark replacement subject to any contingencies that do not occur before the LIBOR replacement date, such person would be unable to use the statutory right to select the Board-selected benchmark replacement rate in advance. On the LIBOR replacement date, such contract would be regarded, as applicable, as a LIBOR contract that contains no fallback provisions (or contains fallback provisions that identify neither a specific benchmark replacement nor a determining person), or a LIBOR contract for which a determining person does not select a benchmark replacement, and thus, the applicable Board-selected benchmark replacement shall be the benchmark replacement

[139] Alternatively, depending on the particular language of the LIBOR contract, the determining person may take the position that its authority to select a benchmark replacement under the terms of the LIBOR contract is triggered on the LIBOR replacement date, and select an alternative replacement benchmark on that date only. The LIBOR Act and the final rule generally do not apply to a LIBOR contract for which a determining person selects an alternative benchmark replacement.

[140] As explained elsewhere in the preamble, the alternative interpretation of "determining person" is not preferable because, under that interpretation, a person who has a right to select a benchmark replacement when LIBOR becomes unavailable or non-representative would not become a determining person until the LIBOR replacement date—when LIBOR will *actually* become unavailable or non-representative. Accordingly, that person would need to wait until the LIBOR replacement date to exercise the statutory right under section 104(c)(1) and (c)(2) of the LIBOR Act to select the Board-selected benchmark replacement. The Board believes that this outcome—and the market disruption that would likely result from determining persons not selecting a benchmark replacement until the LIBOR replacement date—would be inconsistent with the Congressional intent to facilitate a smooth transition away from LIBOR and avoid disruptive litigation.

for the LIBOR contract on and after the LIBOR replacement date under section 104(a) or section 104(c)(3) of the LIBOR Act, respectively.[141]

As demonstrated above, the Board's interpretation of "determining person" in the final rule may impact the timing of a determining person's selection but does not affect the ultimate benchmark replacement for contracts under the terms of which the determining person's authority is not triggered until on or after the LIBOR replacement date: Under either possible interpretation, the LIBOR contract would transition to the Board-selected benchmark replacement on and after the LIBOR replacement date.[142] Accordingly, the Board does not believe its interpretation of "determining person" will have a material economic impact on any party to an affected LIBOR contract.

For the reasons discussed above, the Board believes that the economic impact of the final rule on small entities, including any particular class, will not be significant. Therefore, the Board is certifying that the final rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a valid Office of Management and Budget (OMB) control number. The Board reviewed both the proposed rule and the final

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[141] Alternatively, depending on the particular language of the LIBOR contract, the determining person may take the position that its authority to select a benchmark replacement under the terms of the LIBOR contract is triggered on the LIBOR replacement date, and select a replacement benchmark on that date only. The LIBOR Act and the final rule generally do not apply to a LIBOR contract for which a determining person selects an alternative benchmark replacement.

[142] *But see supra* notes 139 and 141.

rule under the authority delegated to the Board by the OMB and determined that it contains no collections of information under the PRA.[143] Accordingly, there is no paperwork burden associated with the final rule. The Board received no comments concerning paperwork burden associated with the proposed rule.

C. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106-102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board received no comments on these matters and believes that the final rule is written plainly and clearly.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Section 302(a) of the Riegle Community Development and Regulatory Improvement Act (the "Riegle Act"), Pub. L. 103-325, generally requires that, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, a Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[144] In addition, section 302(b) of the Riegle Act requires new regulations and amendments to existing regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally shall take effect on the first day of a

[143] *See* 44 U.S.C. 3502(3).

[144] 12 U.S.C. 4802(a).

calendar quarter that begins on or after the date of publication in the *Federal Register*.[145] This requirement concerning the effective date does not apply in certain limited cases, including (i) if the agency determines, for good cause published with the regulation, that the regulation should become effective before such time, and (ii) if the regulation is required to take effect on a different date pursuant to an Act of Congress.[146]

The Board believes that, in this case, there is good cause for an earlier effective date. In particular, an earlier effective date gives determining persons, including any determining person that is an insured depository institution, additional time to use the statutory right to select the Board-selected benchmark replacement, rather than requiring the determining person to wait until at least April 1, 2023, to make such selection. For this reason, the Board believes that an earlier effective date will increase certainty for parties to LIBOR contracts involving determining persons and will facilitate a smooth transition away from LIBOR after the LIBOR replacement date.

In addition, prompt effectiveness of the rule is consistent with Congressional intent.[147]

List of Subjects in 12 CFR Part 253

Banks and banking, Interest rates

Authority and Issuance

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System adds new part 253 to 12 CFR chapter II, as follows:

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[145] 12 U.S.C. 4802(b).

[146] *Id.*

[147] 12 U.S.C. 4802(b)(1)(C); *see also* 12 U.S.C. 5807.

PART 253—REGULATIONS IMPLEMENTING THE ADJUSTABLE INTEREST RATE (LIBOR) ACT (REGULATION ZZ)

Sec.

253.1 – Authority, Purpose, and Scope
253.2 – Definitions
253.3 – Applicability
253.4 – Board-selected Benchmark Replacements
253.5 – Benchmark Replacement Conforming Changes
253.6 – Preemption
253.7 – Continuity of Contract and Safe Harbor

Authority: Pub. L. 117-103, div. U.

§ 253.1 – Authority, Purpose, and Scope

(a) *Authority*. The Board of Governors of the Federal Reserve System (Board) has issued this part (Regulation ZZ) under the authority of Pub. L. 117-103, division U (the "Adjustable Interest Rate (LIBOR) Act"), codified at 12 U.S.C. 5801 *et seq*.

(b) *Purpose*. The purposes of the Adjustable Interest Rate (LIBOR) Act are to establish a clear and uniform process, on a nationwide basis, for replacing the overnight and one-, three-, six-, and 12-month tenors of U.S. dollar LIBOR in existing contracts that do not provide for the use of a clearly defined or practicable replacement benchmark rate; to preclude litigation related to such existing contracts; to allow existing contracts that reference LIBOR but provide for the use of a clearly defined and practicable replacement rate to operate according to their terms; and to address LIBOR references in Federal law.[1] This regulation implements the statute by defining terms used in the statute and identifying Board-selected benchmark replacements for LIBOR contracts.

[1] The act does not affect the ability of parties to use any appropriate benchmark rate in new contracts.

(c) *Scope*. As described in § 253.3, the Adjustable Interest Rate (LIBOR) Act and this regulation apply by their terms to existing contracts governed by federal law or the law of any state that reference the overnight and one-, three-, six-, and 12-month tenors of U.S. dollar LIBOR and do not have fallback provisions providing for the use of a clearly defined and practicable replacement benchmark rate following the LIBOR replacement date, unless the parties to that contract agree in writing that the contract is not subject to the Adjustable Interest Rate (LIBOR) Act. This regulation does not apply to or affect existing or prospective contracts that do not reference the overnight or one-, three-, six-, or 12-month tenors of U.S. dollar LIBOR, and except as provided in § 253.3(a)(1)(iii) and (c), generally does not apply to or affect LIBOR contracts that have fallback provisions providing for the use of a clearly defined and practicable replacement benchmark for LIBOR (either directly or through selection by a determining person), even if that rate differs from the otherwise applicable Board-selected benchmark replacement. Any determining person's selection of the applicable Board-selected benchmark replacement pursuant to § 253.3(c) is subject to § 253.4, 253.5 (including any benchmark replacement conforming changes made by a calculating person), 253.6, and 253.7.

§ 253.2 Definitions.

30-day Average SOFR means the 30-calendar-day compounded average of SOFR, as published by the Federal Reserve Bank of New York or any successor administrator.

90-day Average SOFR means the 90-calendar-day compounded average of SOFR, as published by the Federal Reserve Bank of New York or any successor administrator.

Benchmark means an index of interest rates or dividend rates that is used, in whole or in part, as the basis of or as a reference for calculating or determining any valuation, payment, or other measurement.

Benchmark administrator means a person that publishes a benchmark for use by third parties.

Benchmark replacement means a benchmark, or an interest rate or dividend rate (which may or may not be based in whole or in part on a prior setting of LIBOR) to replace LIBOR or any interest rate or dividend rate based on LIBOR, whether on a temporary, permanent, or indefinite basis, under or with respect to a LIBOR contract.

Benchmark replacement conforming change means any technical, administrative, or operational change, alteration, or modification that (i) the Board determines, in its discretion, would address one or more issues affecting the implementation, administration, and calculation of the Board-selected benchmark replacement in LIBOR contracts; or (ii) solely with respect to a LIBOR contract that is not a consumer loan, in the reasonable judgment of a calculating person, are otherwise necessary or appropriate to permit the implementation, administration, and calculation of the Board-selected benchmark replacement under or with respect to a LIBOR contract after giving due consideration to any benchmark replacement conforming changes determined by the Board under item (i) of this definition.

Board-selected benchmark replacement means the benchmark replacements identified in § 253.4 of this part.

Business day means any day except for (i) a Saturday, (ii) a Sunday, (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities, or (iv) a day on which the Federal Reserve Bank of New York, with advance notice, chooses not to publish its Treasury repurchase agreement reference rates if participants in the Treasury repurchase agreement market broadly expect to treat that day as a holiday.

Calculating person means, with respect to any LIBOR contract, any person, including the determining person, responsible for calculating or determining any valuation, payment, or other measurement based on a benchmark.

CME Term SOFR means the CME Term SOFR Reference Rates published for one-, three-, six-, and 12-month tenors as administered by CME Group Benchmark Administration, Ltd. (or any successor administrator thereof).

Consumer has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

Consumer loan means a consumer credit transaction.

Credit has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

Derivative transaction means a contract that would satisfy the criteria to be a "Protocol Covered Document" under the ISDA protocol but for the fact that one or more parties to such contract is not an "Adhering Party" as such term is used in the ISDA protocol, provided that, for purposes of this definition, "Protocol Effective Date" as such term is used in the ISDA protocol means the LIBOR replacement date for the relevant LIBOR contract.

Derivative transaction fallback observation day means the day that is two payment business days prior to the payment date for the relevant calculation period.

Determining person means, with respect to any LIBOR contract, any person with the sole authority, right, or obligation, including on a temporary basis (as identified by the LIBOR contract or by the governing law of the LIBOR contract, as appropriate) to determine a benchmark replacement, whether or not the person's authority, right, or obligation is subject to any contingencies specified in the LIBOR contract or by the governing law of the LIBOR contract.

Fallback provisions means terms in a LIBOR contract for determining a benchmark replacement, including any terms relating to the date on which the benchmark replacement becomes effective.

Federal Housing Finance Agency (FHFA)-regulated entity has the same meaning as "regulated entity" in 12 U.S.C. 4502(20).

Federal Family Education Loan Program (FFELP) asset-backed securitization (ABS) means an asset-backed security for which more than 50 percent of the collateral pool consists of FFELP loans, as reported in the most recent servicer report available on the LIBOR replacement date.

FHFA-regulated-entity contract means a LIBOR contract that is a commercial or multifamily mortgage loan that has been purchased or guaranteed, in whole or in part, by an FHFA-regulated entity, or for which an FHFA-regulated entity is identified as a party in the transaction documents, and that is (i) a commercial or multifamily mortgage-backed security (other than a security backed by consumer loans), (ii) a collateralized mortgage obligation, (iii) a credit risk transfer transaction, or (iv) a Federal Home Loan Bank advance.

ISDA protocol means the ISDA 2020 IBOR Fallbacks Protocol published by the International Swaps and Derivatives Association, Inc., on October 23, 2020, and minor or technical amendments thereto.

LIBOR (i) means the overnight and one-, three-, six-, and 12-month tenors of U.S. dollar LIBOR (formerly known as the London interbank offered rate) as administered by ICE Benchmark Administration Limited (or any predecessor or successor administrator thereof) and (ii) does not include the one-week or two-month tenors of U.S. dollar LIBOR.

LIBOR contract means any contract, agreement, indenture, organizational document, guarantee, mortgage, deed of trust, lease, security (whether representing debt or equity, including any

interest in a corporation, a partnership, or a limited liability company), instrument, or other obligation or asset that, by its terms, uses LIBOR as a benchmark.

LIBOR replacement date means the first London banking day after June 30, 2023, unless the Board determines that any LIBOR tenor will cease to be published or cease to be representative on a different date.

Relevant benchmark administrator means (i) Bloomberg Index Services Limited with respect to Fallback Rate (SOFR), (ii) CME Group Benchmark Administration, Ltd. with respect to CME Term SOFR, (iii) Refinitiv Limited with respect to the Board-selected benchmark replacement for a LIBOR contract that is a consumer loan, and (iv) The Federal Reserve Bank of New York with respect to 30-day Average SOFR and 90-day Average SOFR.

Security has the same meaning as in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).

SOFR means the Secured Overnight Financing Rate published by the Federal Reserve Bank of New York or any successor administrator.

State means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

§ 253.3 Applicability.

(a) *General requirement*. On and after the LIBOR replacement date, the applicable Board-selected benchmark replacement shall be the benchmark replacement for the following LIBOR contracts, except to the extent that an exception in paragraph (b) of this section applies:

(1) A LIBOR contract with one of the following characteristics as of the LIBOR replacement date, after giving effect to paragraph (a)(2) of this section:

(i) The LIBOR contract contains no fallback provisions;

(ii) The LIBOR contract contains fallback provisions that identify neither—

(A) A specific benchmark replacement; nor

(B) A determining person; or

(iii) The LIBOR contract contains fallback provisions that identify a determining person, but the determining person has not selected a benchmark replacement by the earlier of the LIBOR replacement date and the latest date for selecting a benchmark replacement according to the terms of the LIBOR contract, for any reason.

(2) For purposes of this part, on the LIBOR replacement date, any reference in any fallback provisions of a LIBOR contract to the following shall be disregarded as if not included in the fallback provisions of such LIBOR contract and shall be deemed null and void and without any force or effect:

(i) A benchmark replacement that is based in any way on any LIBOR value, except to account for the difference between LIBOR and the benchmark replacement; or

(ii) A requirement that a person (other than a benchmark administrator) conduct a poll, survey, or inquiries for quotes or information concerning interbank lending or deposit rates (including, but not limited to, Eurodollar deposit or lending rates).

(b) *Exceptions*. Notwithstanding paragraph (a), this part shall not apply to—

(1) Any LIBOR contract that the parties have agreed in writing shall not be subject to the Adjustable Interest Rate (LIBOR) Act;

(2) Any LIBOR contract that contains fallback provisions that identify a benchmark replacement that is not based in any way on any LIBOR value (including the prime rate or the effective Federal Funds rate) after application of paragraph (a)(2) of this section; or

(3) Except as provided in paragraph (a)(2) or (a)(1)(iii) of this section, any LIBOR contract subject to paragraph (c) of this section as to which a determining person does not elect to use a Board-selected benchmark replacement pursuant to this paragraph (c).

(c) *Selection of Board-selected benchmark replacement by determining person.* Except for any LIBOR contract described in paragraph (b)(2) of this section, a determining person may select the Board-selected benchmark replacement specified in § 253.4 of this rule as the benchmark replacement for a LIBOR contract. Any such selection shall be—

(i) Irrevocable;

(ii) Made by the earlier of the LIBOR replacement date and the latest date for selecting a benchmark replacement according to the terms of the LIBOR contract; and

(iii) Used in any determinations of the benchmark under or with respect to the LIBOR contract occurring on and after the LIBOR replacement date.

(d) *Other provisions of LIBOR contracts unchanged.* Except as provided in paragraph (a)(2) of this section and in § 253.5, where the applicable Board-selected benchmark replacement becomes the benchmark replacement for a LIBOR contract on and after the LIBOR replacement date pursuant to paragraphs (a) or (c) of this section, all other provisions of such contract shall not be altered or impaired and shall apply to such contract using the Board-selected benchmark replacement, including but not limited to:

(1) Any provision specifying the date for determining a benchmark, except in the case of derivative transactions, which are subject to § 253.4(a)(2), and Federal Home Loan Bank advances, which are subject to § 253.4(b)(3)(ii)(B);

(2) Any provision specifying rounding conventions for a benchmark;

(3) Any provision referencing LIBOR or any LIBOR value prior to the LIBOR replacement date (including any provision requiring a person to look back to a LIBOR value as of a date preceding the LIBOR replacement date);

(4) Any provision applying any cap, floor, modifier, or spread adjustment to which LIBOR had been subject pursuant to the terms of a LIBOR contract;

(5) Any provision of Federal consumer financial law that—

(i) Requires creditors to notify borrowers regarding a change-in-terms; or

(ii) Governs the reevaluation of rate increases on credit card accounts under open-ended (not home-secured) consumer credit plans; or

(6) Except as provided in 12 U.S.C. 5804(c), the rights or obligations of any person, or the authorities of any agency, under Federal consumer financial law, as defined in 12 U.S.C. 5481.

§ 253.4 Board-selected Benchmark Replacements.

(a) *Derivative transactions*. (1) A LIBOR contract subject to the requirements of this part that is a derivative transaction shall use the benchmark replacement identified as the "Fallback Rate (SOFR)" in the ISDA protocol for each day on which LIBOR would ordinarily be observed occurring on or after the LIBOR replacement date. For clarity, the reference to "spread relating to U.S. dollar LIBOR" in the definition of "Fallback Rate (SOFR)" in the ISDA protocol is equal to the applicable tenor spread adjustment identified in paragraph (c) of this section.

(2) The benchmark replacement used to calculate the payment due for the relevant calculation period shall be determined on the derivative transaction fallback observation day in respect of the day that, under the LIBOR contract, would have been used to determine the LIBOR-based rate that is being replaced or, if the Board-selected benchmark replacement in respect of that day is

not available on the derivative transaction fallback observation day, the most recently available publication on the derivative transaction fallback observation day shall be used.

(b) *All other transactions*. On the LIBOR replacement date, a LIBOR contract subject to the requirements of this part that is not a derivative transaction shall use the following benchmark replacements:

(1) For a LIBOR contract that is not a consumer loan, an FHFA-regulated-entity contract, or a FFELP ABS—

(i) In place of overnight LIBOR, the benchmark replacement shall be SOFR plus the tenor spread adjustment identified in paragraph (c)(1) of this section; and

(ii) In place of one-, three-, six-, or 12-month tenors of LIBOR, the benchmark replacement shall be the corresponding one-, three-, six-, or 12-month CME Term SOFR plus the applicable tenor spread adjustment identified in paragraph (c) of this section.

(2) For a LIBOR contract that is a consumer loan—

(i) During the one-year period beginning on the LIBOR replacement date:

(A) In place of overnight LIBOR, the benchmark replacement shall be SOFR plus an amount that transitions linearly for each business day during that period from:

(*1*) The difference between SOFR and overnight LIBOR determined as of the day immediately before the LIBOR replacement date; to

(*2*) The tenor spread adjustment identified in paragraph (c)(1) of this section; or

(B) In place of the one-, three-, six-, or 12-month tenors of LIBOR, the benchmark replacement shall be the corresponding one-, three-, six-, or 12-month CME Term SOFR plus an amount that transitions linearly for each business day during that period from:

(*1*) The difference between the relevant CME Term SOFR and the relevant LIBOR tenor determined as of the day immediately before the LIBOR replacement date; to

(*2*) The applicable tenor spread adjustment identified in paragraph (c) of this section.

(ii) On the date one year after the LIBOR replacement date and thereafter:

(A) In place of overnight LIBOR, the benchmark replacement shall be SOFR plus the tenor spread adjustment identified in paragraph (c)(1) of this section; and

(B) In place of one-, three-, six-, or 12-month tenors of LIBOR, the benchmark replacement shall be the corresponding one-, three-, six-, or 12-month CME Term SOFR plus the applicable tenor spread adjustment identified in paragraph (c) of this section.

(iii) The rates published or provided by Refinitiv Limited as "USD IBOR Cash Fallbacks" for "Consumer" products shall be deemed equal to the rates identified in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(3) For a LIBOR contract that is an FHFA-regulated-entity contract—

(i) For an FHFA-regulated-entity contract that is not a Federal Home Loan Bank advance—

(A) In place of overnight LIBOR, the benchmark replacement shall be SOFR plus the tenor spread adjustment identified in paragraph (c)(1) of this section; and

(B) In place of one-, three-, six-, or 12-month tenors of LIBOR, the benchmark replacement shall be the 30-day Average SOFR plus the applicable tenor spread adjustment identified in paragraph (c) of this section.

(ii) For an FHFA-regulated-entity contract that is a Federal Home Loan Bank advance—

(A) The benchmark replacement shall be the "Fallback Rate (SOFR)" in the ISDA protocol for each day on which LIBOR would ordinarily be observed occurring on or after the LIBOR replacement date. For clarity, the reference to "spread relating to U.S. dollar LIBOR" in the

definition of "Fallback Rate (SOFR)" in the ISDA protocol is equal to the applicable tenor spread adjustment identified in paragraph (c) of this section.

(B) The benchmark replacement used to calculate the payment due for the relevant calculation period shall be determined on the derivative transaction fallback observation day in respect of the day that, under the LIBOR contract, would have been used to determine the LIBOR-based rate that is being replaced or, if the Board-selected benchmark replacement in respect of that day is not available on the derivative transaction fallback observation day, the most recently available publication on the derivative transaction fallback observation day shall be used.

(4) For a LIBOR contract that is a FFELP ABS—

(i) In place of one-month LIBOR, the benchmark replacement shall be 30-day Average SOFR plus the tenor spread adjustment identified in paragraph (c)(2) of this section;

(ii) In place of three-month LIBOR, the benchmark shall be 90-day Average SOFR plus the tenor spread adjustment identified in paragraph (c)(3) of this section; and

(iii) In place of six- or 12-month tenors of LIBOR, the benchmark replacement shall be 30-day Average SOFR plus the tenor spread adjustment identified in paragraphs (c)(4) or (c)(5) of this section, as applicable.

(c) *Tenor spread adjustments*. The following tenor spread adjustments shall be included as part of the Board-selected benchmark replacements as indicated in paragraphs (a) and (b):

(1) 0.00644 percent for overnight LIBOR;

(2) 0.11448 percent for one-month LIBOR;

(3) 0.26161 percent for three-month LIBOR;

(4) 0.42826 percent for six-month LIBOR; and

(5) 0.71513 percent for 12-month LIBOR.

§ 253.5 Benchmark Replacement Conforming Changes.

(a) *Benchmark replacement conforming changes generally*.

(1) If the Board-selected benchmark replacement becomes the benchmark replacement for a LIBOR contract pursuant to § 253.3(a) or (c), all applicable benchmark replacement conforming changes shall become an integral part of the LIBOR contract.

(2) Paragraph (b) of this section establishes specific benchmark replacement conforming changes. The Board may, in its discretion, publish additional benchmark replacement conforming changes by regulation or order.

(3) Solely with respect to any LIBOR contract that is not a consumer loan, a calculating person may make any additional technical, administrative, or operational changes, alterations, or modifications that, in that person's reasonable judgment, would be necessary or appropriate to permit the implementation, administration, and calculation of the Board-selected benchmark replacement under or with respect to a LIBOR contract after giving due consideration to any changes, alterations, or modifications otherwise required by the Board, without any requirement to obtain consent from any other person prior to the adoption of such benchmark replacement conforming changes.

(b) *Specified benchmark replacement conforming changes*.

(1) Any reference to a specified source for LIBOR (such as a particular newspaper, website, or screen) shall be replaced with the publication of the applicable Board-selected benchmark replacement (inclusive or exclusive of the relevant tenor spread adjustment identified in § 253.4(c)) by either the relevant benchmark administrator for the applicable Board-selected benchmark replacement or any third party authorized by the relevant benchmark administrator to publish the applicable Board-selected benchmark replacement;

(2) Any reference to a particular time of day for determining LIBOR (such as 11:00 a.m. London time) shall be replaced with the standard publication time for the applicable Board-selected benchmark replacement (inclusive or exclusive of the relevant tenor spread adjustment identified in § 253.4(c)), as established by the relevant benchmark administrator.

(3) Any provision of a LIBOR contract requiring use of a combination (such as an average) of LIBOR values over a period of time that spans the LIBOR replacement date shall be modified to provide that the combination shall be calculated consistent with that contractual provision using (i) the applicable LIBOR for any date prior to the LIBOR replacement date and (ii) the applicable Board-selected benchmark replacement rate for any date on or following the LIBOR replacement date, respectively.

(4) Subject to § 253.4(a) and 253.4(b)(3)(ii), to the extent a Board-selected benchmark replacement is not available or published on a particular day indicated in the LIBOR contract as the determination date, the most recently available publication of the Board-selected benchmark replacement will apply.

§ 253.6 Preemption.

(a) Pursuant to section 107 of the Adjustable Interest Rate (LIBOR) Act, 12 U.S.C. 5806, this part supersedes any provision of any state or local law, statute, rule, regulation, or standard—

(1) Relating to the selection or use of a benchmark replacement or related conforming changes; or

(2) Expressly limiting the manner of calculating interest, including the compounding of interest, as that provision applies to the selection or use of a Board-selected benchmark replacement or benchmark replacement conforming changes.

§ 253.7 Continuity of Contract and Safe Harbor.

(a) The provisions of section 105(a)–(d) of the Adjustable Interest Rate (LIBOR) Act, 12 U.S.C. 5804(a)–(d), shall apply to any LIBOR contract for which the Board-selected benchmark replacement becomes the benchmark replacement pursuant to § 253.3(a) or (c).

(b) Nothing in this part is intended to alter or modify the availability or effect of the provisions of section 105(e) of the Adjustable Interest Rate (LIBOR) Act, 12 U.S.C. 5804(e).

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,
Secretary of the Board.