Consumer Financial Protection Bureau

LIBOR Transition FAQs

The questions and answers below pertain to compliance with CFPB regulations for consumer financial products and services impacted by the anticipated LIBOR discontinuation and resulting need to transition to other indices. The guidance addresses CFPB regulatory requirements for both existing accounts and new originations as they complete the steps necessary to discontinue use of LIBOR. Other legal requirements may also apply.

All Consumer Financial Products and Services

NOTE: The questions and answers in this section apply to all consumer financial products and services impacted by the LIBOR transition.

QUESTION 1:

What is the "LIBOR transition?"

ANSWER (UPDATED 4/28/2023)**:**

The "LIBOR transition" references both the anticipated discontinuation of LIBOR (and LIBOR-based indices), as well as the preparations financial institutions, government agencies, and other entities are making to transition businesses from LIBOR-based indices.

On June 30, 2023, the last tenors of USD LIBOR (LIBOR) are expected to end. This change will affect some adjustable (or variable) rate loans and lines of credit, such as adjustable-rate mortgages (ARMs), reverse mortgages, home equity lines of credit (HELOCs), credit cards,

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student loans, and any other consumer loans that use LIBOR as the index. For consumer financial products and services, financial entities are developing their approach to the LIBOR transition, including how to transition existing accounts from LIBOR to another index and selecting new indices for new originations going forward.

In the U.S., the Federal Reserve Board (the Board) has convened a group called the Alternative Reference Rates Committee (ARRC) to help facilitate the likely transition away from the use of LIBOR as an index. The ARRC is comprised of a diverse set of private-sector entities in markets affected by LIBOR, and a wide array of official-sector entities, including banking and financial sector regulators (such as the CFPB) as non-voting, ex-officio members. The ARRC has identified the steps industries need to complete for the transition, such as making contract revision and replacement index selection recommendations. More information about the LIBOR transition and ARRC recommendations on preparing for the transition can be found on the ARRC's website.

In March 2022, Congress enacted the Adjustable Interest Rate Act (LIBOR Act), which among other things, provided certain safe harbors for use of indices identified by the Board as replacement indices for tenors of LIBOR. 12 U.S.C. § 5804. On January 26, 2023, the Board published a final rule identifying the Board-selected benchmark replacement indices for loans, including consumer loans, that would qualify for these safe harbors. 88 FR 5204. For consumer loans, the Board identified the index as the "USD IBOR Cash Fallbacks for Consumer products," which is published by Refinitiv as "USD IBOR Consumer Cash Fallbacks." While the replacement index may be referred to in slightly different ways by different entities (*e.g.*, USD IBOR Cash Fallbacks for Consumer Products, IBOR Consumer Cash Fallbacks, Refinitiv USD IBOR Consumer Cash Fallbacks), these references all refer to the same replacement index. Further, the tenors of the USD IBOR Consumer Cash Fallbacks index rely on the same calculation methodology as recommended by the ARRC for SOFR-based spread-adjusted indices. As a result, the 1-month, 3-month, and 6-month tenors of USD IBOR Consumer Cash Fallbacks are the same as the replacement indices the ARRC recommended for 1-month, 3-month, and 6-month tenors of LIBOR. See the ARRC's March 15, 2023 statement. In addition, the Federal Reserve Board identified a USD IBOR Consumer Cash Fallbacks replacement tenor for the 12-month LIBOR tenor.

The CFPB provided the FAQs below to address regulatory provisions affected by the LIBOR transition and published a final rule and an interim final rule to address regulatory changes needed for the transition (LIBOR Transition Rule).

QUESTION 2:

Are there specific regulatory or statutory requirements creditors need to consider as they prepare to transition impacted consumers away from the LIBOR index?

ANSWER (UPDATED 12/7/2021)**:**

Yes. Creditors have regulatory and statutory requirements impacted or triggered by the LIBOR transition for both new and existing consumer accounts. For certain consumer financial products and services, statutes and regulations may have specific requirements that are triggered or impacted by the LIBOR transition and any accompanying index change. For example, Regulation Z has requirements for certain products regarding consumer notification of a change to the contract terms, limits on when the index can change, and requirements for selecting an appropriate replacement index. Additionally, creditors will want to be cognizant of other standard regulatory and statutory requirements, such as prohibitions in the Dodd-Frank Act on unfair, deceptive, or abusive acts or practices, and continue to follow their normal business practices in assessing and mitigating risk in those areas while completing the LIBOR transition.

The following list highlights certain CFPB regulatory provisions impacted by the LIBOR transition. Creditors and card issuers of variable-rate products using LIBOR as an index will want to consider these identified provisions, as well as other federal and state requirements and guidance, when making any LIBOR-related changes to the consumer's index or other loan terms.

CLOSED-END PRODUCTS AND SERVICES

1) Adjustable-Rate Mortgages:

- Origination disclosure requirements for the adjustable-rate loan program disclosure, particularly the loan program example (12 CFR § 1026.19(b)(2));
- Refinancing provisions governing whether changing to a particular replacement index is considered a refinancing, and triggering, for example, new transaction disclosures and new ATR/QM determinations, as applicable (12 CFR § 1026.20(a); Comments 20(a)-3.ii and 3.iv);
- Servicing disclosure requirements on the content and format of mortgage servicing notices, such as interest rate adjustment notices and periodic statements (12 CFR §§ 1026.20(c), (d), and .41, as well as Appendix H-4(D)); and

- For alternative mortgage transaction ARMs, limitations on increasing the interest rate or finance charge (12 CFR § 1004.4(a)(2)).

2) Private Student Loans:

- Refinancing provisions governing whether changing to a particular replacement index is considered a refinancing and triggering, for example, new transaction disclosures, as applicable (12 CFR § 1026.20(a); Comments 20(a)-3.ii and 3.iv).

3) Other Closed-End Products and Services (e.g., Auto Loans, Personal Installment Loans):

- Refinancing provisions governing whether changing to a particular replacement index is considered a refinancing and triggering, for example, new transaction disclosures, as applicable (12 CFR § 1026.20(a); Comments 20(a)-3.ii and 3.iv).

OPEN-END PRODUCTS AND SERVICES

1) Credit Cards:

- Index change requirements, including limitations on changing the index used to determine the annual percentage rate (APR) for variable rate accounts and the requirements for identifying a replacement index, as well as LIBOR-specific provisions (12 CFR § 1026.55(b)(2) and 55(b)(7));
- Change-in-terms notice requirements (12 CFR § 1026.9(c)(2)); and
- Reevaluations of rate increases and the index used as a benchmark for comparison, including LIBOR-specific exceptions (12 CFR § 1026.59).

2) HELOCs (including Open-End Reverse Mortgages):

- Index change requirements, including limitations on changing an index and the requirements for identifying a replacement index, as well as LIBOR-specific provisions (12 CFR § 1026.40(f)(1) and 40(f)(3)(ii));
- Change-in-terms notice requirements (12 CFR § 1026.9(c)(1));
- Application Disclosure requirements, particularly the loan program example (12 CFR § 1026.40(d)(12)); and
- For alternative mortgage transaction HELOCs, limitations on increasing the interest rate or finance charge (12 CFR § 1004.4(a)).

3) Other Open-End (not Home-Secured) Products and Services (e.g., overdraft lines of credit):

- Change-in-terms notice requirements (12 CFR § 1026.9(c)(2)).

These regulatory provisions are discussed in greater detail in the FAQs below.

QUESTION 3:

What is the CFPB's LIBOR Transition Rule?

ANSWER (UPDATED 4/28/2023)**:**

On June 4, 2020, in anticipation of the LIBOR sunset date, the CFPB published a proposed rule, which submitted amendments to certain existing Regulation Z requirements to facilitate the LIBOR transition for public comment.

On December 7, 2021, the CFPB finalized that rule, largely as proposed. In the final rule (the 2021 LIBOR Transition Final Rule), the CFPB:

- Amended open-end and closed-end provisions to provide examples of replacement indices for LIBOR indices that meet certain Regulation Z conditions.
- Amended Regulation Z to permit HELOC creditors and credit card issuers to transition existing accounts that use a LIBOR index to a replacement index on or after April 1, 2022, if certain conditions are met.
- Amended HELOC and credit card change-in-terms notice provisions and explained how they apply to accounts transitioning away from using a LIBOR index.
- Amended Regulation Z to address how the rate reevaluation provisions applicable to credit card accounts apply to the transition from using a LIBOR index to a replacement index.

On April 28, 2023, the CFPB issued an Interim Final Rule (2023 LIBOR Transition Interim Final Rule) for the LIBOR transition to add an example (in addition to the 1-, 3-, and 6-month replacement index examples) of a 12-month replacement index for LIBOR that meets the Regulation Z conditions discussed above. The Interim Final Rule also changes the terminology used to refer to the SOFR-based replacement indices so that it aligns with the LIBOR Act. As a result, where the rule identified "spread-adjusted index based on SOFR recommended by the ARRC for consumer products," the regulation now references "the Board-selected benchmark replacement index for consumer loans." These two phrases identify the same replacement index.

The 2021 LIBOR Transition Final Rule is effective April 1, 2022. For certain change-in-terms notice provisions, creditors and card issuers can begin complying on April 1, 2022, although mandatory compliance does not begin until October 1, 2022. Additionally, for the changes to Appendix H-4(D) to the sample mortgage servicing interest rate adjustment notices, a creditor (or assignee or servicer, as applicable) may optionally rely on either a format substantially similar to the legacy sample forms or a format substantially similar to the updated sample forms beginning April 1, 2022, through September 30, 2023, to be deemed in compliance with the content and format requirements for the notices. However, beginning on October 1, 2023, these entities may only rely on a form substantially similar to the updated sample forms to be deemed in compliance with the content and format requirements for the notices.

The 2023 LIBOR Transition Interim Final Rule is effective May 15, 2023. For creditors of 1-month, 3-month, and 6-month LIBOR-based products that relied on the 2021 LIBOR Transition Final Rule, the 2023 LIBOR Transition Interim Final Rule will result in the same outcome, although the terminology has been adjusted, and will not impact the efforts already made to transition from LIBOR.

Note that the examples added to Regulation Z in the 2021 LIBOR Transition Final Rule and the 2023 LIBOR Transition Interim Final Rule are meant only to illustrate indices comparable to specific tenors of LIBOR for purposes of the closed-end refinancing provision in Regulation Z or that meet certain substantial similarity requirements when compared to specific LIBOR tenors for purposes of certain open-end requirements in Regulation Z. In certain circumstances, their use can deem a creditor compliant with certain Regulation Z requirements. However, they are **not** exhaustive of the indices that may meet these requirements when compared to LIBOR, and other replacement indices may also be compliant. The LIBOR Transition Rule provides a non-exhaustive list of factors for certain provisions that a creditor may consider if choosing to select a replacement index that is not an example in the Rule.

The LIBOR Transition Rule can be found here. A plain language executive summary of the rule can be found here.

QUESTION 4:

Are there other resources for developing a LIBOR transition plan that help to mitigate compliance risk?

ANSWER (UPDATED 4/28/2023)**:**

Yes. Public and private sector groups have developed resources to assist in planning and implementing the LIBOR transition.

The Federal Financial Institutions Examination Council (FFIEC) has issued a joint statement identifying some of the types of risks entities should consider as they develop their transition plan and providing information about preparing for supervisory examinations. The Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation also issued a joint statement on reference rates for loans, providing further guidance on the transition away from LIBOR. Additionally, the CFPB has joined an interagency statement on managing the LIBOR transition.

The ARRC has also developed several resources to assist industry in the transition, available here. For example, the ARRC has published recommended best practices for consumer loans, available here and released a summary of its spread-adjusted fallback recommendations available here. The ARRC has also published a statement explaining why the Board-selected replacements for consumer loans are the same as the SOFR-based spread-adjusted indices the ARRC previously recommended. For ARMs and for Private Student Loans specifically, the ARRC has also published resource guides to help creditors identify actions needed to plan for the transition.

Further, some private organizations are providing resources to assist in transition planning. For example, some investors, such as Fannie Mae and Freddie Mac have provided a transition “playbook” for their stakeholders. Additionally, some trade organizations have also developed materials, webinars, checklists, and other preparation tools. For example, some are publishing notices members may voluntarily provide to their consumers to help provide more notification for when and how those consumers’ accounts will be impacted by the transition. Trade organizations may offer these resources for free or for a membership fee.

QUESTION 5:
Do LIBOR transition resources only cover regulatory requirements?

ANSWER (UPDATED 12/7/2021)**:**
No. The LIBOR transition plan resources provided by regulators, the FFIEC, the ARRC, and private organizations cover not only specific regulatory requirements, but also provide more general guidance, address best practices for creditors to assist consumers in the transition, and identify contractual issues creditors may face.

For example, the FFIEC's joint statement noted that disclosure of account terms altered by the LIBOR transition should, and in some cases are required by law to, be communicated to borrowers in advance of a reference rate change to help them understand how a new reference rate affects their contractual principal and interest payments, APR, and other terms. The Mortgage Bankers Association has created this notice template for their members to help explain the LIBOR transition for ARM consumers, even when not regulatorily required.

In addition to best practices, public and private sector groups have also worked to address contractual issues posed by the LIBOR transition. For example, the ARRC has worked to develop recommended fallback contract language for consumer financial products impacted by the LIBOR transition. The ARRC's recommended language and instructions for use are available on the ARRC's website.

The CFPB encourages creditors and card issuers to consider adopting these practices, even if not required by the regulation or statute, to help provide clarity for all stakeholders and to minimize the impact of the transition on consumer payments.

Adjustable-Rate Mortgage Products

NOTE: The questions and answers in this section apply to closed-end adjustable-rate mortgage (ARM) products and services.

QUESTION 1:
Will the LIBOR transition affect ARM loan program origination disclosures?

ANSWER (UPDATED 6/4/2020)**:**
Yes, for some loan programs. Regulation Z, 12 CFR § 1026.19(b) requires, among other things, that a creditor provide ARM loan program origination disclosures in a transaction

secured by the consumer's principal dwelling where the loan term is greater than one year. Such disclosures related to the index include, as applicable, the index or formula used, explanations of how the interest rate and payment will be determined, and rules relating to changes in the index or interest rate (among other loan terms), such as an explanation of interest rate limitations. 12 CFR § 1026.19(b)(2).

Additionally, the creditor must disclose a loan program example illustrating the effect of interest rate changes. 12 CFR § 1026.19(b)(2)(viii). At the option of the creditor, this disclosure may be either (or both):

- **Historical Example:** A historical example, based on a $10,000 loan amount, illustrating the interest rate impacts on the payments and loan balance for the most recent 15 years of index values for the consumer's loan program terms (12 CFR § 1026.19(b)(2)(viii)(A)); or
- **Initial and Maximum Example:** The initial and maximum interest rates and payments based on a $10,000 loan amount and a statement that the payment may increase or decrease substantially depending on rate changes (12 CFR § 1026.19(b)(2)(viii)(B)).

The LIBOR transition may impact the loan program example disclosure, depending on which index the creditor selects for new accounts. For more information on the potential impact, see LIBOR Adjustable-Rate Mortgage FAQ 2, below.

QUESTION 2:

When providing ARM loan program origination disclosures, how does a creditor disclose the historical example for indices, such as the SOFR-based indices, that do not yet have 15 years of values?

ANSWER (UPDATED 6/4/2020)**:**

For ARM loan program origination disclosures, Regulation Z, 12 CFR § 1026.19(b) requires, among other things, a loan program example disclosure illustrating the impacts of interest rate changes given the loan program terms. 12 CFR § 1026.19(b)(2)(viii).

The loan program example disclosure may be either (or both):

- **Historical Example:** A historical example, based on a $10,000 loan amount, illustrating the interest rate impacts on the payments and loan balance for the most recent 15 years of index values for the consumer's loan program terms (12 CFR § 1026.19(b)(2)(viii)(A)); or

- **Initial and Maximum Example:** The initial and maximum interest rates and payments based on a $10,000 loan amount and a statement that the payment may increase or decrease substantially depending on rate changes (12 CFR § 1026.19(b)(2)(viii)(B)).

If the creditor selects an index that has not been available for 15 years, such as one of the SOFR-based indices, and chooses to provide the historical example in the disclosure, the creditor need only provide index values that go back as far as values are available. Comment 19(b)(2)(viii)(A)-1. For example, index values for the "30-day Average SOFR Index," published by the Federal Reserve Board of New York, are available beginning on May 2, 2018. Index values for May 2, 2018, through February 28, 2020, can be found on the Federal Reserve Board of New York's website in this downloadable excel spreadsheet. Index values for March 2, 2020, to the present can be found here. Information about the index and using these values can be found here.

QUESTION 3:

Will the CHARM Booklet be affected by the LIBOR transition?

ANSWER (UPDATED 6/4/2020)**:**

Yes. In addition to the ARM loan program origination disclosure, applicants for ARMs that will be secured by the consumer's dwelling and have a loan term greater than one year also must receive a booklet titled Consumer Handbook on Adjustable Rate Mortgages (CHARM booklet), or a suitable substitute, generally when the application is provided. 12 CFR § 1026.19(b)(1).

The CHARM booklet was revised to, among other things, remove the historical comparison example that used LIBOR as an index for comparison.

Creditors may, at their option, immediately begin using the revised CHARM booklet, or a suitable substitute, to comply with the requirements in Regulation Z. However, creditors may also use earlier versions of the CHARM booklet until existing supplies are exhausted. When reprinting the CHARM booklet, the most recent version should be used.

More information about the updates to the CHARM booklet can be found here. The revised CHARM Booklet is available here.

QUESTION 4:

For existing adjustable-rate mortgage loans, are there regulatory limitations on selecting the index replacement under Regulation Z?

ANSWER (UPDATED 12/7/2021)**:**

Generally, no. While there may be potential contractual limitations, Regulation Z does not place restrictions on the circumstances under which a creditor may replace the index for existing (i.e., legacy) ARMs.

However, certain Regulation Z origination-related requirements for closed-end loans are triggered if a comparable index is not selected when a creditor changes the index on a closed-end loan. If a creditor chooses an index that is not comparable, that index replacement adds a variable rate feature to the transaction and results in the refinance of the transaction. Comment 20(a)-3.ii.B.

To determine whether a replacement index is comparable for purposes of the LIBOR transition, a creditor must use the historical data or future expectations to look at certain factors, which include, but are not limited to, whether:

- The movements (increases and decreases in value) of the two indices over time are comparable;
- The replacement index will have a comparable impact on the consumers' payments (if there is sufficient data for this analysis);
- The index levels are comparable (i.e., although indices may increase and decrease at the same rate, is one index always a certain number of basis points higher than another or does it require a spread-adjustment);
- The replacement index is publicly available; and
- The replacement index is outside the control of the creditor.

Comment 20(a)-3.iv.

These factors are not an exhaustive list. Additionally, the relevant factors to be considered in determining whether a replacement index is comparable to a particular LIBOR index will depend on which replacement index is being considered and the LIBOR index being replaced. For example, a creditor may need to consider whether the replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced.

More information on which indices may be comparable to replace tenors of LIBOR are discussed in LIBOR Adjustable-Rate Mortgage FAQ 5.

QUESTION 5:

What indices are identified in Regulation Z as examples of comparable indices for each LIBOR tenor?

ANSWER (UPDATED 4/28/2023)**:**
As stated above, in LIBOR Adjustable-Rate Mortgage FAQ 4, if a creditor wishes to avoid triggering a refinance of the transaction during the LIBOR transition, the creditor must select a replacement index that is comparable to the LIBOR index. Comment 20(a)-3.ii.B.

The Board has identified certain tenors of a SOFR-based spread adjusted index to replace certain tenors of LIBOR for consumer products. Refinitiv Limited will publish these tenors of the SOFR-based replacement index under the name "USD IBOR Consumer Cash Fallbacks." For purposes of this Regulation Z provision, these tenors of USD IBOR Consumer Cash Fallbacks are examples of indices that are comparable to the following tenors of LIBOR:

- **1-month LIBOR**: The 1-month USD IBOR Consumer Cash Fallbacks is an example of a comparable index to replace 1-month LIBOR.
- **3-month LIBOR**: The 3-month USD IBOR Consumer Cash Fallbacks is an example of a comparable index to replace 3-month LIBOR.
- **6-month LIBOR**: The 6-month USD IBOR Consumer Cash Fallbacks is an example of a comparable index to replace 6-month LIBOR.
- **12-month LIBOR**: The 12-month USD IBOR Consumer Cash Fallbacks is an example of a comparable index to replace 12-month LIBOR.

Comment 20(a)-3.ii.B. The USD IBOR Consumer Cash Fallback tenors are indices identified in the 2023 LIBOR Transition Interim Final Rule as "the Board-selected benchmark replacement for consumer loans." § 1026.2(a)(28).

If a creditor replaced one of the identified tenors of LIBOR with its respective USD IBOR Consumer Cash Fallbacks tenor, the creditor would not trigger a refinance through that action. Other indices may also be comparable.

QUESTION 6:

Is there an example index identified in Regulation Z as comparable to the 12-month LIBOR tenor?

ANSWER (UPDATED 4/28/2023)**:**
Yes. The 2023 LIBOR Transition Interim Final Rule identifies the 12-month USD IBOR Consumer Cash Fallbacks tenor as an index that is comparable to the 12-month LIBOR tenor. Comment 20(a)-3.ii.B.

QUESTION 7:

What is required if a refinance of the ARM is triggered by the LIBOR transition?

ANSWER (UPDATED 12/7/2021)**:**
As stated above in LIBOR Adjustable-Rate Mortgage FAQ 4, under Regulation Z, if the creditor does not select a comparable index during the LIBOR transition when replacing the index of a closed-end loan, the creditor will trigger requirements for a refinance of the transaction. Comment 20(a)-3.ii.B.

If a refinancing occurs, the creditor is required to provide new origination disclosures. Comment 20(a)-1. For example, for ARMs, the creditor must provide typical ARM refinance disclosures, including the ARM loan program origination disclosures, a new CHARM booklet, and new TRID disclosures, as applicable.

Additionally, a refinance also triggers new ability-to-repay and qualified mortgage analysis requirements. Comments 20(a)-1 and 3; 12 CFR § 1026.19(b); (e); (f); and § 1026.43.

For more information about the loan program origination disclosures, see LIBOR Adjustable-Rate Mortgage FAQs 1 and 2. For more information about the CHARM Booklet, see LIBOR Adjustable-Rate Mortgage FAQ 3. For more information about the TRID disclosures, see the TRID Small Entity Compliance Guide. For more information about ability-to-repay and qualified mortgage requirements, see the ATR-QM Small Entity Compliance Guide.

QUESTION 8:

Which ARM servicing disclosures will the LIBOR transition affect?

ANSWER (UPDATED 12/7//2021)**:**

Generally, none.

Regulation Z requires certain disclosures for ARMs generally after origination occurs. Most notably, mortgage servicing disclosures include, as applicable:

- The **Initial Interest Rate Adjustment Notice**, which alerts the consumer to the initial reset of the ARM (i.e., the initial interest rate adjustment) and provides the consumer with information about the loan at the initial reset. The notice is provided months prior to the initial reset. 12 CFR § 1026.20(d).
- The **Subsequent Interest Rate Adjustment Notice**, which alerts the consumer to subsequent interest rate adjustments that results in a payment change. The notice provides the consumer with information about the new interest rate and periodic payment prior to each subsequent adjustment that results in a payment change. 12 CFR § 1026.20(c).
- The **Periodic Statement**, which provides the consumer with mortgage loan account information, including alerting the consumer to upcoming interest rate changes and periodic payment changes, for each billing cycle. 12 CFR § 1026.41.

The LIBOR Transition Rule amended Appendix H-4(D)(2) and H-4(D)(4) of Regulation Z, which provides sample forms for the Initial and Subsequent Interest Rate Adjustment Notices. Reliance on the same forms allows creditors (and assignees or servicers) to be deemed in compliance with the notice content and format requirements. The updated sample forms, among other things, remove reference to LIBOR and include an example of a compliant reference to a SOFR-based index. See LIBOR Adjustable-Rate Mortgage FAQ 14 for more information about the sample forms.

Generally, the LIBOR transition will not change the timing or types of information required for the three mortgage servicing disclosures discussed above. However, Regulation Z places limitations on the content and format of these disclosures, which may be relevant if servicers are considering whether they can add information that is not required, including about the LIBOR transition.

For more information about how the LIBOR transition impacts the mortgage servicing disclosures and periodic statements, including the content and format limitations, see LIBOR

Adjustable-Rate Mortgage FAQs 9, 10, 11, and 12 below. For more information on these mortgage servicing disclosures generally, see Section 5 and 6 of the Mortgage Servicing Small Entity Compliance Guide.

QUESTION 9:

Will the LIBOR transition trigger the ARM interest rate adjustment notices for existing loans?

ANSWER (UPDATED 6/4/2020)**:**

Generally, no. The Initial Interest Rate Adjustment Notice is required to be provided months prior to the initial interest rate adjustment (except loans with terms of one year or less). 12 CFR § 1026.20(d). Subsequent Interest Rate Adjustment Notices are triggered only if the adjustment results in a payment change. 12 CFR § 1026.20(c).

Generally, the method for addressing the sunset of LIBOR is to change the index, and thus, the source from which the interest rate for the adjustment is derived. In most cases, this index change will not disrupt the contract's schedule of interest rate adjustments. As a result, for most accounts, the ARM interest rate adjustment notices will continue on the same schedule established prior to the LIBOR transition.

But note, if the creditor changes the interest rate or the schedule for the interest rate adjustments at the same time it changes the index from LIBOR, the interest rate or schedule change may trigger the Initial or Subsequent Interest Rate Adjustment Notices. If it is the first interest rate change for the loan, in general, the Initial Interest Rate Adjustment Notice must be sent (at least 210 days, but no more than 240 days, before the first payment at the adjusted level is due). 12 CFR § 1026.20(d). If it is not the first interest rate change for the loan and the change of index results in a new payment amount, generally the Subsequent Interest Rate Adjustment Notice must be provided (at least 60 days, but no more than 120 days, before the first payment at the adjusted level is due). 12 CFR § 1026.20(c)(2).

For more information on the ARM interest rate adjustment notices, see Section 6 of the Mortgage Servicing Small Entity Compliance Guide.

QUESTION 10:

What index should be identified in the ARM interest rate adjustment notices if the interest rate is scheduled to change while the creditor is transitioning the account to a replacement index for existing loans?

ANSWER (UPDATED 12/7/2021)**:**

Regulation Z, 12 CFR §§ 1026.20(c)(2) and (d)(2) require that ARM interest rate adjustment notices disclose the index used in making interest rate adjustments and explain how payments are determined. The disclosures must reflect the legal obligations of the consumer and creditor when the notices are provided. Comment 17(c)(1)-1.

In some cases, the contract has a scheduled interest rate adjustment that will occur while the creditor is transitioning the account from LIBOR. In these cases, disclosures must reflect the legal obligations of the consumer and creditor when the disclosures are provided. 12 CFR § 1026.17(c)(1); Comment 17(c)(1)-1. Specifically, the interest rate adjustment notices may need to identify LIBOR, not the replacement index, as the index applicable to the account at the time the notices are provided, even if the payment adjustment (based on LIBOR) will occur after the account has subsequently transitioned from LIBOR. The replacement index will not be identified until the next scheduled adjustment when that Subsequent Interest Rate Adjustment Notice is sent.

For example, assume a consumer's ARM contract currently states that the next annual interest rate adjustment will be based on a LIBOR index and that this contract term is legally binding under state law. The contract states the rate will adjust on May 15, 2023, and the first payment at the adjusted level is due on October 1, 2023. Assume also that the creditor is working to complete the steps in each of its mortgage contracts to transition all of its mortgage accounts away from LIBOR indices, and for this account, completes those steps, including selecting the replacement index, on June 1, 2023. Under these facts, on the rate adjustment date (May 15, 2023), for this particular consumer's account, the creditor has not yet taken those contractual steps to change the index. Thus, when the servicer sends the Subsequent Interest Rate Adjustment Notice on June 15, 2023, it must reference LIBOR, even though after the rate adjustment date, but before the notice was sent, the account was transitioned from LIBOR. This is because the index used to adjust the interest rate for the calculation of the new payment amount due on October 1 was the LIBOR index, not the replacement index. The replacement index will apply to the next scheduled adjustment for the account, which will be on May 15, 2024. The Subsequent Interest Rate Adjustment Notice sent on June 15, 2024, will be based on, and disclose, the replacement index, and will determine the payment due on October 1, 2024.

Similar requirements apply if the contract has the *initial* scheduled interest rate adjustment that will occur while the creditor is transitioning the account from LIBOR. In those cases, remember that for the Initial Interest Rate Adjustment Notice, because the notice is typically sent before the interest rate for the new payment at the adjusted level has been calculated, the new interest rate (and the new payment calculated from the new interest rate) are not known as of the date of the notice, and the notice should include estimated amounts that are labeled as estimates. 12 CFR § 1026.20(d)(2).

For example, assume the same facts above, but assume this is the first interest rate adjustment under the ARM contract. If the interest rate will adjust on May 15, 2023, and the new payment will be due on October 1, 2023, the creditor must provide the Initial Interest Rate Adjustment Notice before the interest rate adjustment occurs. Assume the creditor provides this notice on February 15, 2023. Because the index used to adjust the interest rate for the calculation of the new payment amount on October 1 will be the LIBOR index when the rate is adjusted on May 15, Regulation Z requires that the interest rate adjustment notice disclosure reference the LIBOR-based index. This is true even though the transition to the replacement index will occur on June 1, before the new payment amount is due on October 1. Additionally, because the notice is sent on February 15, before the interest rate is set on May 15, the creditor must disclose that the interest rate and payments based on LIBOR are estimates. The replacement index will apply to the next scheduled adjustment for the account, which will be on May 15, 2024. The Subsequent Interest Rate Adjustment Notice on June 15, 2024, will be based on the replacement index, and will determine the payment due on October 1, 2024.

But assume instead the creditor will complete the steps to transition to the replacement index on April 15, 2023, instead of June 1, 2023, before the interest rate is scheduled to adjust (May 15, 2023). In that case, the Initial Interest Rate Adjustment Notice sent on February 15, 2023, will still reference the LIBOR-based index because that is the index applicable to the account at the time the disclosure is provided. However, because the notice is provided before the rate adjustment occurs, the creditor will label the interest rate and payment amount as estimates. On May 15, 2023, the interest rate will adjust based on the replacement index, not LIBOR, because the transition occurred on April 15, 2023, and the replacement index is the index for the account at the time of the rate adjustment. The new payment on October 1, 2023, will be based on the replacement index interest rate.

For more information on the ARM interest rate adjustment notices, see Section 6 of the Mortgage Servicing Small Entity Compliance Guide.

QUESTION 11:

May information be added to the ARM interest rate adjustment notices to notify the consumer of the LIBOR transition for existing loans?

ANSWER (UPDATED 6/4/2020)**:**

No. Information other than that required by the regulation (i.e., identifying the applicable index, payment, etc.) may not be added into the disclosure itself. However, the rule provides some flexibility for servicers to communicate additional information to the consumer when sending the notices, so long as that information is not provided within the ARM notice itself.

For the Initial Interest Rate Adjustment Notice, Regulation Z requires that the disclosures be provided in the same order as and be substantially similar to the forms in Appendix H of Regulation Z. 12 CFR § 1026.20(d)(3). The notice must also be on a separate document from other documents provided to the consumer. 12 CFR § 1026.17(a)(1); Comment 20(d)-3. Therefore, unrequired information about the LIBOR transition may not be included in the ARM notice and LIBOR transition information may not be included on the same piece of paper as the ARM notice.

But note, additional information may be provided in the same envelope as the Initial Interest Rate Adjustment Notice. Comment 20(d)-3. Thus, while additional information may not be included in the notice itself, the information may, but is not required to, be placed on a separate LIBOR transition notice document in the same envelope used to send the Initial Interest Rate Adjustment Notice to the consumer.

For the Subsequent Interest Rate Adjustment Notices, the regulation requires that the disclosures be provided in the same order as and be substantially similar to the forms in Appendix H of Regulation Z. 12 CFR § 1026.20(c)(3)(i). However, there is no requirement that the Subsequent Interest Rate Adjustment Notices be in a separate document. Thus, additional LIBOR transition-related information may be placed in the same document as the Subsequent Interest Rate Adjustment Notice, so long as the information is segregated from the disclosures itself, and the Subsequent Interest Rate Adjustment Notice is substantially similar to the model forms and still clear and conspicuous.

Notices regarding the LIBOR transition may also be sent separately from the ARM interest rate adjustment notices at any time.

For more information on the ARM interest rate adjustment notices, see Section 6 of the Mortgage Servicing Small Entity Compliance Guide.

QUESTION 12:

May information be added to the Periodic Statement to notify the consumer of the LIBOR transition for existing loans?

ANSWER (UPDATED 6/4/2020)**:**

Generally, yes. Regulation Z, 12 CFR § 1026.41(c) requires that the disclosures in the Periodic Statement be written clearly and conspicuously. Adding information to the Periodic Statement is not prohibited, as long as the additional information does not "overwhelm or obscure" the required disclosures. Comments 41(c)-1 and -2. Sample form H-30(B) provides an example of how to add additional information.

For more information on mortgage Periodic Statement requirements from the Mortgage Servicing Rule, see Section 5 of the Mortgage Servicing Small Entity Compliance Guide.

QUESTION 13:

If sending voluntary notices identifying the future replacement index with the required ARM servicing disclosures that identify LIBOR as the currently applicable index, is there any language that can be added to the required disclosures to explain the difference?

ANSWER (UPDATED 12/7/2021)**:**

In addition to the regulatory required notices described in LIBOR Adjustable-Rate Mortgage FAQ 8 above, creditors may choose to send voluntary notices to the consumer to help explain the LIBOR transition and account impacts, as discussed in LIBOR General FAQs 4 and 5. When doing so, it is possible that the required disclosure may reference LIBOR, while the voluntary notice describes how another index will replace the LIBOR index in the future.

If this occurs, creditors may wonder whether they can add information to the required notices. A creditor can add information only in certain circumstances, as discussed in LIBOR Adjustable-Rate Mortgage FAQs 11 and 12.

In all cases, however, information can be added to the voluntary notice to explain that LIBOR was identified on the required notice because LIBOR is currently the index that applies to the mortgage loan account or was used to calculate the new payment amount discussed on the notice, but that another index will replace the LIBOR index on a future date.

QUESTION 14:

Were the interest rate adjustment model and sample forms in Appendix H of Regulation Z updated to reflect the LIBOR transition?

ANSWER (UPDATED 4/28/2023)**:**

Yes, the forms that referenced LIBOR were updated to reflect disclosures for new contracts. The LIBOR Transition Rule revised the sample interest rate adjustment notices in Regulation Z to 1) remove reference to LIBOR, 2) illustrate one compliant way to disclose the "30-day Average SOFR rate" as the index, and 3) correct an error on Appendix H-4(D)(4) to add the date of the disclosure as required by the regulation, a change that is unrelated to the LIBOR transition.

The updated sample forms in the LIBOR Transition Rule reflect disclosures for new contracts. Legacy contracts will likely use a different index, one that is comparable to the LIBOR tenor applicable to the account. For example, if a creditor of a legacy contract is providing the forms after they have transitioned the contract from 12-month LIBOR tenor to the 12-month USD IBOR Consumer Cash Fallbacks tenor, the creditor would disclose the "12-month USD IBOR Consumer Cash Fallbacks" index and identify that "the 12-month USD IBOR Consumer Cash Fallbacks index is published daily on the Refinitiv website." While this example refers to the index as "12-month USD IBOR Consumer Cash Fallbacks", the creditor may alternatively choose to reference one of the other commonly used names for the index, such as the name used in Fannie Mae or Freddie Mac adjustable-rate mortgage contracts.

A copy of the updated sample forms is available here.

Creditors (or assignees or servicers) can rely on the new sample forms beginning April 1, 2022, to be deemed in compliance with the notice content and format requirements. The prior legacy versions will also be available in the regulation and can be relied upon until September 30, 2023. On October 1, 2023, only the new sample forms will be available and will be the only version of the sample forms that can be relied upon for compliance with the notice content and format requirements.

QUESTION 15:

Are there Regulation D alternative mortgage transaction ARM index requirements to be considered by applicable creditors in the LIBOR transition?

ANSWER (UPDATED 6/4/2020)**:**
Yes.

For reference, an "Alternative Mortgage Transaction" is a loan, credit sale or account:

- That is secured by an interest in a residential structure, with one–to–four units, whether or not that structure is attached to real property;
- Made primarily for personal, family or household purposes; and
- In which the interest rate or finance charge may be adjusted or renegotiated. 12 CFR § 1004.2.

For applicable alternative mortgage transaction ARMs under Regulation D, increases to the interest rate or finance charge are subject to certain limitations. See, e.g., 12 CFR § 1004.4(a). Creditors of certain existing alternative mortgage transaction ARMs transitioning away from LIBOR should review these requirements when selecting a replacement index.

Private Student Loan Products

NOTE: The questions and answers in this section apply to closed-end private student loan products covered by Regulation Z, including "private education loans" as defined by Regulation Z, 12 CFR § 1026.46(b)(5).

QUESTION 1:

For existing private student loans, are there regulatory limitations on selecting the replacement index under Regulation Z?

ANSWER (UPDATED 12/7/2021)**:**
Generally, no. While there may be potential contractual limitations, Regulation Z does not place restrictions on the circumstances under which the creditor may replace the index for existing (i.e., legacy) private student loans.

However, certain Regulation Z origination-related requirements for closed-end loans are triggered if a comparable index is not selected when the creditor transitions from LIBOR. If a creditor chooses an index that is not comparable, that index replacement adds a variable rate feature to the transaction and results in the refinance of the transaction. Comment 20(a)-3.ii.B.

To determine whether a replacement index is comparable for purposes of the LIBOR transition, a creditor must use the historical data or future expectations, and look at relevant factors that include, but are not limited to, whether:

- The movements (increases and decreases in value) of the two indices over time are comparable;
- The replacement index will have a comparable impact on the consumers' payments (if there is sufficient data for this analysis);
- The index levels are comparable (i.e., although indices may increase and decrease at the same rate, is one index always a certain number of basis points higher than another or require a spread-adjustment);
- The replacement index is publicly available; and
- The replacement index is outside the control of the creditor.

Comment 20(a)-3.iv.

These factors are not an exhaustive list. Additionally, the relevant factors considered may depend on the replacement index being considered and the LIBOR index being replaced. For example, a creditor may need to consider whether the replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced.

More information on which indices are comparable to certain tenors of LIBOR can be found in [LIBOR Private Student Loan FAQ 2](#).

QUESTION 2:

What indices are identified in Regulation Z as examples of comparable replacement indices for each LIBOR tenor?

ANSWER (UPDATED 4/28/2023)**:**

As stated above, in LIBOR Private Student Loan FAQ 1, if a creditor wishes to avoid triggering a refinance of the transaction during the LIBOR transition under Regulation Z, the creditor must select a replacement index that is comparable to the LIBOR index. Comment 20(a)-3.ii.B.

The Board has identified certain tenors of a SOFR-based spread adjusted index to replace certain tenors of LIBOR for consumer products. Refinitiv Limited will publish these tenors of the SOFR-based replacement index as "USD IBOR Consumer Cash Fallbacks." For purposes of this Regulation Z provision, these tenors of USD IBOR Consumer Cash Fallbacks are examples of indices that are comparable to the following tenors of LIBOR:

- **1-month LIBOR**: The 1-month USD IBOR Consumer Cash Fallbacks is an example of a comparable index to replace 1-month LIBOR.
- **3-month LIBOR**: The 3-month USD IBOR Consumer Cash Fallbacks is an example of a comparable index to replace 3-month LIBOR.
- **6-month LIBOR**: The 6-month USD IBOR Consumer Cash Fallbacks is an example of a comparable index to replace 6-month LIBOR.
- **12-month LIBOR**: The 12-month USD IBOR Consumer Cash Fallbacks is an example of a comparable index to replace 12-month LIBOR.

Comment 20(a)-3.ii.B. These tenors of the USD IBOR Consumer Cash Fallbacks index are identified in the 2023 LIBOR Transition Interim Final Rule as "the Board-selected benchmark replacement for consumer loans." § 1026.2(a)(28).

If a creditor replaced one of the identified tenors of LIBOR with its respective USD IBOR Consumer Cash Fallbacks tenor, the creditor would not trigger a refinance through that action. Other indices may also be comparable.

QUESTION 3:

Is there an example index identified in Regulation Z as comparable to the 12-month LIBOR tenor?

ANSWER (UPDATED 4/28/2023)**:**

Yes. The 2023 LIBOR Transition Interim Final Rule identified the 12-month USD IBOR Consumer Cash Fallbacks tenor as an index that is comparable to the 12-month LIBOR tenor.

QUESTION 4:

What is required if a refinance of a private student loan is triggered by the LIBOR transition?

ANSWER (UPDATED 12/7/2021)**:**

As stated above in LIBOR Private Student Loan FAQ 1, under Regulation Z, if the creditor does not select a comparable index during the LIBOR transition when replacing the index of a closed-end loan, the creditor will trigger requirements for a refinance of the transaction. Comment 20(a)-3.ii.B.

If a refinancing occurs, the creditor is required to provide a complete new set of disclosures. Comment 20(a)-1. For example, for a private education loan, as defined in Regulation Z, 12 CFR § 1026.46(b)(5), the new disclosures required include new approval disclosures and new final disclosures. 12 CFR § 1026.47(b) and (c). For other private student loan products that are not "private education loans" but are otherwise covered by the closed-end loan requirements under Regulation Z, creditors will need to provide the disclosures in Subpart C of Regulation Z. See, e.g., 12 CFR § 1026.18.

Home Equity Line of Credit Products

NOTE: The questions and answers in this section apply to home equity lines of credit (HELOCs), including open-end reverse mortgages where applicable in the regulations discussed.

QUESTION 1:

Are HELOC Application Disclosures impacted by the LIBOR transition?

ANSWER (UPDATED 6/4/2020)**:**

Yes. Regulation Z, 12 CFR § 1026.40 generally requires, among other things, that creditors provide certain disclosures about the plan at the time consumers are provided a HELOC application. Like other loan origination disclosures required by Regulation Z, the requirements include disclosures, as applicable, about the security interest, payment terms, variable rate information, fees, and other key plan terms.

Among those disclosures, a creditor is required to disclose a historical example, based on a $10,000 extension of credit, illustrating how the APRs and payments would have been affected by index value changes over the last 15 years. 12 CFR § 1026.40(d)(12)(xi).

This disclosure may be impacted by the LIBOR transition, depending on which index the creditor selects for new accounts. LIBOR Home Equity Line of Credit FAQ 2, below, provides more detail on the impacts the LIBOR transition may have on this disclosure.

QUESTION 2:

When providing HELOC Application Disclosures, how does a creditor disclose the historical example for indices, such as the SOFR indices, that do not yet have 15 years of values?

ANSWER (UPDATED 6/4/2020)**:**

On the HELOC Application Disclosures, Regulation Z, 12 CFR § 1026.40(d)(12)(xi) requires that creditors disclose a historical example illustrating how the APRs and payments would have been affected by index value changes over the past 15 years.

For indices, such as the SOFR-based indices, that have not been available for 15 years, the creditor may start the example at the year for which the index values are first available. Comment 40(d)(12)(xi)-1. For example, index values for the “30-day Average SOFR Index,” published by the Federal Reserve Board of New York, are available beginning on May 2, 2018. Index values for May 2, 2018 through February 28, 2020 can be found on the Federal Reserve Board of New York’s website in this downloadable excel spreadsheet. Index values for March 2, 2020 to the present can be found here. Information about the index and using these values can be found here.

The historical values used must be reflective of the method of choosing index values for the plan. However, a creditor must only provide one index value per year, even if adjustments occur more than annually, and must use the same date or period for each year. Comment 40(d)(12)(xi)-2.

QUESTION 3:

For existing accounts, will the LIBOR transition trigger the HELOC change-in-terms notice requirements?

ANSWER (UPDATED 4/28/2023)**:**

Yes. Regulation Z, 12 CFR § 1026.9(c)(1)(i) requires HELOC creditors to provide a change-in-terms notice whenever any of the terms in the HELOC Account-Opening Disclosures are changed over the life of the loan. Additionally, a change-in-terms notice is required when the minimum periodic payment is increased. The notice generally must be provided at least 15 days prior to the effective date of the change.

Specifically for the LIBOR transition, changing the index or increasing the margin, periodic rate, or APR (calculated using the replacement index) at the time the notice is provided will trigger a change-in-terms notice. On or after October 1, 2022, the notice must disclose not only an increase in the margin, but also any decrease in the margin (although creditors may optionally comply early with this requirement beginning April 1, 2022). 12 CFR § 1026.9(c)(1)(ii).

The change-in-terms notice may be a complete new set of the initial disclosures containing the changed term if the change is highlighted in some way on the notice, or if the notice is accompanied by a letter or some other insert that indicates or draws attention to the term that is changed. Comment 9(c)(1)(i)-4.

For example, assume the creditor selected the prime rate as published in the Wall Street Journal (Prime) as the replacement index during the LIBOR transition, which the creditor completes on October 2, 2022. As a result of the change, the creditor must reduce the margin to reach an APR that is substantially similar to the APR calculated using the LIBOR index value on October 18, 2021 (as discussed in more detail in the FAQs below). Assume this results in the same periodic rate and APR at the time the change-in-terms notice is provided. Also, at the time the notice is provided, assume no other terms required to be disclosed in a change-in-terms notice are changing. Under these facts, the creditor would need to provide a change-in-terms notice that highlights the 1) replacement index and 2) the new margin value.

In certain cases, where a creditor is using one of the tenors of the USD IBOR Consumer Cash Fallbacks index as the replacement index, the creditor may be permitted to send the change-in-terms notice before the USD IBOR Consumer Cash Fallbacks index is published. If this occurs, a creditor may make modifications in disclosing the periodic rate and the APR in the change-in-terms notice. See LIBOR Home Equity Line of Credit FAQ 4 for a discussion of modifications a creditor can make if this occurs.

QUESTION 4:

What information does a creditor disclose if providing the change-in-terms notice is permitted before the USD IBOR Consumer Cash Fallbacks index is published?

ANSWER (UPDATED 4/28/2023)**:**

During the LIBOR Transition, if the creditor is transitioning to the USD IBOR Consumer Cash Fallbacks replacement tenors for 1-month, 3-month, 6-month or 12-month LIBOR, and the change-in-terms notice is provided before the rates are published, the creditor may use alternative language in the notice to disclose the periodic rate and APR (as calculated using the replacement index) and add certain indications that the periodic rate and APR provided in the notice are estimates. Comment 9(c)(1)-4.

The ability to use the alternative language to disclose the periodic rate and the APR and indicate the periodic rate and the APR are estimates on the change-in-terms notice applies under the following conditions:

1. The HELOC is a variable rate product based on either the 1-month, 3-month, 6-month or 12-month tenor of LIBOR prior to the transition;
2. The LIBOR index is being replaced with the applicable USD IBOR Consumer Cash Fallbacks tenor for that LIBOR tenor;
3. The applicable USD IBOR Consumer Cash Fallbacks index will be unpublished at the time the disclosure is provided;
4. The new periodic rate and APR are unknown at the time the disclosure is provided because the USD IBOR Consumer Cash Fallbacks index tenors have not been published;
5. The USD IBOR Consumer Cash Fallbacks index will be published, and thus the new periodic rate and APR will be known, by the time the replacement of the index takes effect; and

6. The creditor is not changing the margin in conjunction with these changes.

Under these conditions, to satisfy any requirement to disclose the periodic rate and APR (or changes in these rates) as calculated using the replacement index, the creditor may provide information in the change-in-terms notice that indicates for the consumer 1) that information about the periodic rate and APR is not yet available, 2) the creditor estimates that at the time the index is replaced, the periodic rate and APR will be substantially similar to what it would have been had the index not been replaced, and 3) the periodic rate and APR will vary with the market based on a SOFR index. Comment 9(c)(1)-4.

For example, assume a creditor will change the index for a variable rate product to the USD IBOR Consumer Cash Fallbacks tenor for 1-month LIBOR effective July 3, 2023, after the USD IBOR Consumer Cash Fallbacks tenor for 1-month LIBOR will be published. However, under Regulation Z, the creditor must provide the notice at least 15 days prior to July 3. Because the indices will not be published at the time the notice is provided, the creditor will not know the periodic rate or APR based on the USD IBOR Consumer Cash Fallbacks tenor at the time the change-in-terms notice is provided. So long as the creditor is not changing the margin, under these facts and assuming all the conditions summarized above apply, the creditor can indicate on the change-in-terms notice the permitted information discussed above.

QUESTION 5:

Are there limitations for HELOC creditors when selecting a replacement index for the LIBOR transition?

ANSWER (UPDATED 4/28/2023)**:**

Yes. Regulation Z provides limitations on index, margin, and APR changes.

Conditions on index and margin changes. Regulation Z allows a creditor to change the index and margin only under certain conditions. Of those, they include the **Unavailable Provision** and the **LIBOR-Specific Provision.** Similar to the provision as it existed before the LIBOR Transition Rule, the **Unavailable Provision** allows index replacement (and respective margin adjustments) only when the index is no longer available and other conditions are met. 12 CFR § 1026.40(f)(3)(ii)(A). The **LIBOR-Specific Provision** allows creditors of LIBOR-based contracts to transition from a LIBOR index (and make respective margin adjustments) on or after April 1, 2022, if certain conditions are met. 12 CFR § 1026.40(f)(3)(ii)(B). Thus, on or after April 1, 2022, a creditor transitioning from LIBOR may use either the Unavailable Provision (waiting until LIBOR is no longer available) or the LIBOR-Specific Provision (transitioning on or after April 1, 2022). 12 CFR § 1026.40(f)(3)(ii)(A) and 40(f)(3)(ii)(B).

For either option in replacing the LIBOR index, the creditor must meet all of the following conditions:

1. *Trigger for index replacement:* The index may only be changed if either a) the index is no longer available under the Unavailable Provision, or b) on April 1, 2022, under the LIBOR-Specific Provision. Note that there is no definition of "no longer available" in Regulation Z, and as a result, the LIBOR-Specific Provision may be more definitive as to when the transition can occur, if allowed by contract.
2. *Historical fluctuation comparison:* Generally, the replacement index must have historical fluctuations substantially similar to those of the LIBOR tenor being replaced. This condition does not apply if the replacement index is newly established. See LIBOR Home Equity Line of Credit FAQs 6 through 9 for a discussion of the Historical Fluctuation Comparison requirements.
3. *APR comparison:* The replacement index and replacement margin must result in an APR substantially similar to the APR in effect at the time LIBOR is no longer available under the Unavailable Provision, or if using the LIBOR-Specific Provision, to the APR calculated generally using the LIBOR index values on October 18, 2021, and the account's existing margin. See LIBOR Home Equity Line of Credit FAQ 10, for a discussion of the APR Comparison requirements.

12 CFR § 1026.40(f)(3)(ii)(A) and 40(f)(3)(ii)(B).

Conditions on APR changes. Regulation Z also prohibits a change in the APR unless the change is based on an index that is not under the creditor's control and is available to the general public. Note that a publicly available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by viewing on a publicly available website or by telephone, for example) and can use to verify rates imposed under the plan. Comment 40(f)(1)-2.

In addition to the Conditions on Index and Margin Changes and Conditions on APR Changes, certain HELOC products may have other limitations outside of Regulation Z. For example, some may have contractual provisions that limit when the index can be replaced. See LIBOR Home Equity Line of Credit FAQ 12, for more information about contractual impacts. Additionally, certain reverse mortgage products also may be subject to requirements of the Federal Housing Administration (FHA), a part of the US Department of Housing and Urban Development (HUD). For example, HUD published a final rule on March 1, 2023 that, among other things, established a spread-adjusted SOFR index as the Secretary-approved replacement index to transition existing forward and HECM ARMs away from LIBOR.

For all HELOC products, creditors should complete a full legal analysis to determine the limitations that may exist in addition to these Regulation Z provisions. Resources provided by the ARRC can help creditors identify the steps in that analysis. See LIBOR General FAQ 4 for more information on ARRC resources.

QUESTION 6:

Under Condition 2 of the Margin and Index Change Conditions, how does a creditor determine if a potential replacement index has historical fluctuations that are substantially similar to those of the LIBOR index?

ANSWER (UPDATED 4/28/2023)**:**
As discussed above in LIBOR Home Equity Line of Credit FAQ 5, a creditor may only replace the index on a HELOC account if certain conditions are met. If using the Unavailable Provision or the LIBOR-Specific Provision, under the second condition, Historical Fluctuation Comparison, the creditor generally must determine that the replacement index has historical fluctuations that are substantially similar to those of the LIBOR index being replaced, so long as the replacement index is not newly established. 12 CFR § 1026.40(f)(3)(ii)(A) and 40(f)(3)(ii)(B).

Generally, for the Unavailable Provision, this means the creditor must look at the historical fluctuations up through the date the LIBOR index is no longer available. If the creditor is using Prime and transitioning after April 1, 2022, the creditor may rely on the CFPB's determination that this index has historical fluctuations that are substantially similar as of October 18, 2021, and need not complete further historical fluctuation analysis. Comment 40(f)(3)(ii)(A)-2.i. The identified USD IBOR Consumer Cash Fallbacks tenors to replace certain tenors of LIBOR have historical fluctuations that are substantially similar. Accordingly, a creditor using the applicable USD IBOR Consumer Cash Fallbacks tenors as the replacement index need not complete further historical fluctuation analysis when transitioning after April 1, 2022, (or after May 15, 2023, for 12-month LIBOR). Comment 40(f)(3)(ii)(A)-2.ii.

If using the LIBOR-Specific Provision, this means a creditor must look at the historical fluctuations through April 1, 2022, or if the determination is made later, through the date that is 30 days prior to the date the historical fluctuation determination is being made by the creditor. If the creditor is using Prime to replace certain tenors of LIBOR and transitioning after April 1, 2022, the creditor may rely on the CFPB's determination that this index has historical fluctuations that are substantially similar as of October 18, 2021, and need not complete further historical fluctuation analysis. Comment 40(f)(3)(ii)(B)-1.i. The identified USD IBOR Consumer Cash Fallbacks tenors to replace certain tenors of LIBOR have historical fluctuations that are substantially similar. Accordingly, a creditor using the applicable USD IBOR Consumer Cash Fallbacks tenors as the replacement index need not complete further historical fluctuation analysis when transitioning after April 1, 2022, (or after May 15, 2023, for 12-month LIBOR). Comment 40(f)(3)(ii)(B)-1.ii.

Regulation Z provides examples of factors a creditor must use when comparing historical fluctuations for purposes of the LIBOR transition. While the analysis for each index comparison will be unique, these factors highlight key concepts in determining whether a replacement index has historical fluctuations that are substantially similar to those of the particular LIBOR index being replaced. The non-exhaustive list of factors a creditor must look at include whether:

- The movements (increases and decreases in value) of the two indices over time are substantially similar; and
- The consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar (if there is sufficient historical data for this analysis).

Comments 40(f)(3)(ii)(A)-2.iii and 40(f)(3)(ii)(B)-1.iii.

Effective April 1, 2022, the CFPB has determined 1-month and 3-month Prime tenors meet the Historical Fluctuations Comparison condition when compared to their applicable tenors of LIBOR. The LIBOR Transition Rule provided an analysis the CFPB used to determine that these Prime tenors meet the criteria for the Historical Fluctuation Comparison condition, as discussed above. Further, the Board's implementing regulation of the LIBOR Act has determined that the USD IBOR Consumer Cash Fallbacks replacement tenors for 1-month, 3-month, 6-month, and 12-month LIBOR also meet the Historical Fluctuations Comparison condition. For all other indices that are not newly established, creditors will need to perform their own analysis, and determine if the replacement index meets this condition, as well as the other requirements in Regulation Z discussed above.

QUESTION 7:

What if the replacement index selected does not have historical fluctuations to compare to LIBOR for Condition 2 of the Margin and Index Change Conditions?

ANSWER (UPDATED 4/28/2023)**:**

As discussed above in LIBOR Home Equity Line of Credit FAQ 5, a creditor may only replace the index on a HELOC account if certain conditions are met. If using the Unavailable Provision or the LIBOR-Specific Provision, under the second condition, Historical Fluctuation Comparison, the creditor must determine that the replacement index has historical fluctuations that are substantially similar to those of the LIBOR index being replaced, so long as the index is not newly established. 12 CFR § 1026.40(f)(3)(ii)(A) and 40(f)(3)(ii)(B).

For purposes of the LIBOR transition, if a creditor selects a replacement index that is newly established, and therefore does not have a rate history for comparison, the Historical Fluctuation Comparison condition does not apply. The newly established index may still be used as a replacement if it meets the third condition (APR Comparison), i.e., it produces an APR substantially similar to the APR in effect when LIBOR is no longer available under the Unavailable Provision or, if using the LIBOR-Specific Provision, the APR calculated using the LIBOR index values generally on October 18, 2021. 12 CFR § 1026.40(f)(3)(ii)(A) and 40(f)(3)(ii)(B). More information about the APR Comparison condition is discussed in LIBOR Home Equity Line of Credit FAQ 10, below.

"Newly established" is not defined in Regulation Z and is a fact-specific determination. For example, the CFPB does not consider the USD IBOR Consumer Cash Fallbacks index to be newly established, as used in Regulation Z. Although the USD IBOR Consumer Cash Fallbacks index tenors have not yet been published, these tenors will be based on an underlying SOFR rate, which has been published and therefore the tenors have rate history that can be used to determine the historical fluctuations.

QUESTION 8:

What indices are identified in Regulation Z as meeting Condition 2 of the Margin and Index Change Conditions for the LIBOR tenors?

ANSWER (UPDATED 4/28/2023)**:**

The LIBOR Transition Rule and Interim Final Rule provided examples of replacement indices that meet the Historical Fluctuation Comparison Condition, discussed above in LIBOR Home

Equity Line of Credit FAQ 5, when replacing certain LIBOR indices for HELOC products. The examples provided include the USD IBOR Consumer Cash Fallbacks and Prime indices. They would replace each of the following tenors of LIBOR as follows:

- **1-month LIBOR**: The 1-month tenors of Prime and USD IBOR Consumer Cash Fallbacks are examples of replacement indices for 1-month LIBOR.
- **3-month LIBOR**: The 3-month tenors of Prime and USD IBOR Consumer Cash Fallbacks are examples of replacement indices for 3-month LIBOR.
- **6-month LIBOR**: The 6-month USD IBOR Consumer Cash Fallbacks tenor is an example of a replacement index for 6-month LIBOR.
- **12-month LIBOR**: The 12-month USD IBOR Consumer Cash Fallbacks tenor is an example of a replacement index for 12-month LIBOR.

As stated, these indices are examples that meet the Historical Fluctuation Comparison condition. If a creditor uses one of these indices as a replacement for LIBOR, the creditor must still ensure that the replacement index and margin meets the other conditions discussed in LIBOR Home Equity Line of Credit FAQ 5.

Additionally, these are examples, but other indices may also meet the Historical Fluctuation Comparison condition. See LIBOR Home Equity Line of Credit FAQ 5 through 10 for more information on factors for determining if an index is an appropriate replacement for LIBOR during the transition.

QUESTION 9:

Is there an example index identified in Regulation Z as meeting Condition 2 of the Margin and Index Change Conditions for the 12-month LIBOR tenor?

ANSWER (UPDATED 4/28/2023)**:**

Yes. The 2023 LIBOR Transition Interim Final Rule identified the 12-month tenor of USD IBOR Consumer Cash Fallbacks as an index that meets the Historical Fluctuation Comparison Condition for the 12-month LIBOR tenor. Comment 40(f)(3)(ii)(A)-2.ii.

QUESTION 10:

Under Condition 3 of the Margin and Index Change Conditions, how does a creditor determine if the APR under a potential replacement index is substantially similar to the APR under the account's LIBOR index?

ANSWER (UPDATED 4/28/2023)**:**

As discussed above in LIBOR Home Equity Line of Credit FAQ 5, a creditor may only replace the index on a HELOC account if certain conditions are met. If using the Unavailable Provision or the LIBOR-Specific Provision, under the third condition, APR Comparison, the creditor must determine that the replacement index and margin will result in an APR substantially similar to the APR in effect at the time LIBOR is no longer available under the Unavailable Provision, or if using the LIBOR-Specific Provision, to the APR calculated using the LIBOR index value generally on October 18, 2021 with the applicable margin. 12 CFR § 1026.40(f)(3)(ii)(A) and 40(f)(3)(ii)(B).

Under the Unavailable Provision, when comparing the APR, a creditor generally must use the value of the replacement index and the LIBOR index on the day that LIBOR is no longer available and the margin applicable to the account at that time. Comment 40(f)(3)(ii)(A)-3. If the replacement index is not published on the date the LIBOR is no longer available, generally, the creditor must use the index values applicable on the prior calendar day for which both the replacement index and the LIBOR index were published. The margin used is still that in effect just prior to when the change-in-terms notice identifying the replacement index is provided.

If using the LIBOR-specific provision, generally the creditor must use the value of the indices in effect on October 18, 2021, and must use the margin in effect just prior to when the change-in-terms notice identifying the replacement index is provided. Comment 40(f)(3)(ii)(B)-2. If the replacement index is not published on October 18, 2021, generally the creditor must use the index values applicable on the next calendar day for which both the replacement index and the LIBOR index were published. The margin used is still that in effect just prior to when the change-in-terms notice identifying the replacement index is provided.

Under both provisions, however, if a creditor chooses the applicable USD IBOR Consumer Cash Fallbacks tenor to replace the 1-month, 3-month, 6-month, or 12-month LIBOR tenors, because the USD IBOR Consumer Cash Fallbacks tenors will not be published as of October 18, 2021, and may not be published at the time LIBOR is no longer available, the creditor must instead use the LIBOR index value as of June 30, 2023, and the USD IBOR Consumer Cash

Fallbacks value as of the first day it is published, likely July 3, 2023. 12 CFR § 1026.40(f)(3)(ii)(A) and 40(f)(3)(ii)(B).

Note that the comparison of the APRs is based on the index values specified above, and not on the index values when the replacement index is applied to the account (i.e., when a new periodic rate based on the replacement index is applied to the account). Comments 40(f)(3)(ii)(A)-3 and 40(f)(3)(ii)(B)-3

For either provision, if a creditor uses the USD IBOR Consumer Cash Fallbacks tenor to replace the 1-month, 3-month, 6-month, or 12-month tenors of LIBOR, so long as the margin does not change from the margin in effect just prior to when the creditor replaces LIBOR, the creditor will be deemed to be in compliance with this third condition. Comments 40(f)(3)(ii)(A)-3 and 40(f)(3)(ii)(B)-3. This is not available for transitions to Prime because, although Prime meets the Historical Fluctuation Comparison Condition for HELOC products, the margin will need to be adjusted to accommodate the spread between LIBOR and Prime.

QUESTION 11:

What if the HELOC creditor chooses to replace LIBOR prior to April 1, 2022?

ANSWER (UPDATED 12/7/2021)**:**

The LIBOR Transition Rule is not effective until April 1, 2022. If a creditor chooses to replace a LIBOR index before April 1, 2022, the creditor must comply with the version of Regulation Z in effect prior to April 1, 2022. For example, the creditor would not be afforded the LIBOR-Specific Provisions discussed above.

QUESTION 12:

What if the HELOC contract does not allow index replacement until LIBOR is no longer available?

ANSWER (UPDATED 12/7/2021)**:**

As discussed above in LIBOR Home Equity Line of Credit FAQ 5, a creditor may only replace the index on a HELOC account if certain conditions are met. Relevant to the LIBOR transition, two options for replacing the index for a HELOC are: 1) when LIBOR is no longer available (Unavailable Provision) or 2) on or after April 1, 2022 (LIBOR-Specific Provision). Contractual language may limit which option in Regulation Z a creditor may use, and which replacement indices may be selected. Contractual language may also require a creditor to wait until LIBOR is no longer available before it replaces the index. Comment 40(f)(3)(ii)-1. For example, certain reverse mortgage contracts limit the creditor's ability to change the index and the options for replacement indices.

QUESTION 13:

Are there Regulation D alternative mortgage transaction HELOC index requirements to be considered by applicable creditors in the LIBOR transition?

ANSWER (UPDATED 6/4/2020)**:**

Yes.

For reference, an "Alternative Mortgage Transaction" is a loan, credit sale or account:

- That is secured by an interest in a residential structure, with one–to–four units, whether or not that structure is attached to real property;
- Made primarily for personal, family or household purposes; and
- In which the interest rate or finance charge may be adjusted or renegotiated. 12 CFR § 1004.2.

For applicable alternative mortgage transaction HELOCs under Regulation D, increases to the interest rate or finance charge are subject to certain limitations. 12 CFR § 1004.4(a). Creditors of certain existing alternative mortgage transaction HELOCs transitioning away from LIBOR should review these requirements when selecting a replacement index.

Credit Card Products

NOTE: The questions and answers in this section apply to credit card products and services that are not secured by a home. In Regulation Z, the term "creditor" includes card issuers that extend credit. For purposes of this section of the LIBOR FAQs, where Regulation Z references "creditor" this document refers to the "card issuer that extends credit" for ease of reference.

QUESTION 1:

For existing credit card accounts, will the LIBOR transition trigger the Credit Card change-in-terms notice requirements?

ANSWER (UPDATED 4/28/2023)**:**

Yes.

Regulation Z, 12 CFR § 1026.9(c)(2) requires card issuers that extend credit to provide a credit card change-in-terms notice whenever 1) the terms in the account-opening table change, 2) certain rate disclosures, such as the index or margin, change, 3) there is an increase in the required minimum periodic payment, or 4) there is a change in the acquisition of a security interest. 12 CFR § 1026.9(c)(2)(ii). In general, the notice must be provided at least 45 days prior to the effective date of the change. 12 CFR § 1026.9(c)(2)(i)(A).

For the LIBOR transition, changing the index, or increasing the margin, periodic rate, or APR (calculated using the replacement index) at the time the notice is provided will trigger a change-in-terms notice. Effective October 1, 2022, the notice must disclose any reduction in the margin (although card issuers that extend credit may optionally comply early with this requirement beginning April 1, 2022). 12 CFR § 1026.9(c)(2)(v)(A).

If the changed term is disclosed in the Account-Opening Disclosures table, such as the index or the APR, the change (and any information relevant to the change if required to be disclosed in the account-opening table) must be disclosed in the same tabular format on the change-in-terms notice. The tabular format must be substantially similar to the model form in Appendix G-17. 12 CFR § 1026.9(c)(2)(iv)(D). The tabular format is not required for disclosing other changes in the change-in-terms notice, such as changes to the margin or the periodic rate. 12 CFR § 1026.9(c)(2)(iv)(D)(*1*). At the option of the card issuer that extended the credit, the change-in-terms notice can be included with the periodic statement, as long as it meets certain criteria and is substantially similar in format to the notices in Appendix G-20 and G-21. 12 CFR § 1026.9(c)(2)(iv)(D)(*2*). Alternatively, it can be provided separately. 12 CFR § 1026.9(c)(2)(iv)(D)(*3*).

If a card issuer that extends credit is changing the index used to calculate a variable rate, the card issuer that extends credit generally must disclose in a tabular format the amount of the new rate (as calculated using the replacement index) and indicate that the rate varies and how the rate is determined. Comment 9(c)(2)(v)-2.i.

For example, assume the card issuer that extends credit selected Prime as the replacement index for the LIBOR index for its credit card accounts, which the card issuer completes on October 2, 2022. As a result of the change, the card issuer must reduce the margin to reach an APR that is substantially similar to the APR calculated using the LIBOR index value for the account, as discussed in more detail in the FAQs below. Assume this results in the same periodic rate and APR at the time the change-in-terms notice is provided, and no other terms required to be disclosed in the notice will change. Under these facts, the card issuer would need to provide a change-in-terms notice disclosing in a tabular format the 1) APR (calculated using the replacement index), and 2) indicate the rate varies with the market based on Prime. Outside the table, the card issuer would disclose the new margin value.

In certain cases where a card issuer that extends credit is using the USD IBOR Consumer Cash Fallbacks as the replacement index, the card issuer that extends credit may be permitted to send the change-in-terms notice before the USD IBOR Consumer Cash Fallbacks rates are published and make modifications to the change-in-terms notice in disclosing the periodic rate and the APR. See LIBOR Credit Card FAQ 2 for a discussion of modifications a card issuer that extends credit can make if this occurs.

QUESTION 2:

What information does a card issuer that extends credit disclose if providing the change-in-terms notice is permitted before the USD IBOR Consumer Cash Fallbacks index is published?

ANSWER (UPDATED 4/28/2023)**:**

During the LIBOR transition, if a card issuer that extends credit is transitioning to the USD IBOR Consumer Cash Fallbacks tenor that replaces 1-month, 3-month, 6-month or 12-month LIBOR tenors and the change-in-terms notice is provided before these tenors are published, the card issuer may use alternative language in the notice to disclose the periodic rate and APR (as calculated using the replacement index) and add certain indications that the periodic rate and APR provided in the notice are estimates. Comment 9(c)(2)-2.ii.

The ability to use the alternative language to disclose the periodic rate and the APR and indicate the periodic rate and the APR are estimates on the change-in-terms notice applies under the following conditions:

1. The credit card has a rate based on a 1-month, 3-month, 6-month or 12-month LIBOR index;

2. The LIBOR index is being replaced by the applicable USD IBOR Consumer Cash Fallbacks tenor for that LIBOR tenor;
3. The USD IBOR Consumer Cash Fallbacks index will not be published at the time the disclosure is provided;
4. The new periodic rate and APR are unknown at the time the disclosure is provided because these USD IBOR Consumer Cash Fallbacks index tenors have not been published;
5. The USD IBOR Consumer Cash Fallbacks index will be published, and thus the new terms will be known, by the time the replacement of the index takes effect; and
6. The card issuer that extends credit is not changing the margin in conjunction with these changes.

Under these conditions, to satisfy any requirement to disclose the periodic rate and APR (or changes in these rates) as calculated using the replacement index, the card issuer that extends credit may indicate in the change-in-terms notice: 1) that information about the periodic rate and APR is not yet available, 2) the creditor estimates that at the time the index is replaced, the periodic rate and APR will be substantially similar to what it would have been had the index not been replaced, and 3) the periodic rate and APR will vary with the market based on a SOFR index. Comment 9(c)(2)(iv)-2.ii.

For example, assume a card issuer that extends credit will replace 1-month LIBOR with the applicable USD IBOR Consumer Cash Fallbacks tenor effective July 3, 2023, after the USD IBOR Consumer Cash Fallbacks index will be published. However, under Regulation Z, the card issuer must provide the notice at least 45 days prior to July 3. Because the indices will not be published at the time the notice is provided, the card issuer will not know the periodic rate or APR based on the USD IBOR Consumer Cash Fallbacks tenor at the time the change-in-terms notice is provided. So long as the card issuer is not changing the margin, under these facts and assuming all the conditions summarized above apply, the card issuer can include the permitted information discussed above.

QUESTION 3:

Are there limitations for credit card issuers when selecting a replacement index for the LIBOR transition?

ANSWER (UPDATED 12/7/2021)**:**

Yes. Regulation Z provides limitations on index, margin, and APR changes.

Conditions on index and margin changes. Regulation Z allows a card issuer to change the index and margin under certain conditions. Of those, they include the **Unavailable Provision** and the **LIBOR-Specific Provision.** Similar to the provision as it existed before the LIBOR Transition Rule, the **Unavailable Provision** allows index replacement (and margin adjustment) only when the index is unavailable and other conditions are met. 12 CFR § 1026.55(b)(7)(i). The **LIBOR-Specific Provision** allows card issuers to transition a LIBOR-based contract from the LIBOR index (and make respective margin adjustments) on or after April 1, 2022, if certain conditions are met. 12 CFR § 1026.55(b)(7)(ii). Thus, on or after April 1, 2022, a card issuer may use either the Unavailable Provision (waiting until LIBOR is unavailable) or the LIBOR-Specific Provision (transitioning on or after April 1, 2022). 12 CFR § 1026.55(b)(7)(i) and 55(b)(7)(ii).

For either option in replacing the LIBOR index, the card issuer must meet all of the following conditions:

1. *Trigger for index replacement:* The index may be changed either a) when the index is unavailable under the Unavailable Provision, or b) on or after April 1, 2022, under the LIBOR-Specific Provision. Note that there is no definition of "unavailable" in Regulation Z, and as a result, the LIBOR-Specific Provision may be more definitive for when the transition can occur for card issuers, if allowed by contract.

2. *Historical fluctuation comparison:* Generally, the replacement index must have historical fluctuations substantially similar to those of the LIBOR tenor being replaced. This condition does not apply if the replacement index is newly established. See LIBOR Credit Card FAQ 4 for a discussion of the Historical Fluctuation Comparison requirements.

3. *APR comparison:* The replacement index and replacement margin must result in an APR substantially similar to the APR in effect at the time LIBOR becomes unavailable under the Unavailable Provision, or if using the LIBOR-Specific Provision, to the APR calculated using the LIBOR index values generally on October 18, 2021, and the account's existing margin. See LIBOR Credit Card FAQ 9 for a discussion of the APR Comparison requirements.

12 CFR § 1026.55(b)(7)(i) and 55(b)(7)(ii).

Conditions on APR changes. Regulation Z restricts card issuers from increasing an APR on credit card accounts except in limited circumstances. A card issuer is permitted to increase an APR when the change is based on an index that is not under the card issuer's control, is available to the general public, and the increase in the rate is due to an increase in the index.

Note that a publicly available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by viewing on a publicly available website or by telephone, for example) and use to verify the APR applied to the account. Comment 55(b)(2)-3.

In addition to the Conditions on Index and Margin Changes and Conditions on APR Changes, some credit card products may have other limitations outside of Regulation Z. For example, some products may have contractual provisions that limit when the index can be replaced. See LIBOR Credit Card FAQ 9, for more information about contractual impacts.

Card issuers should complete a full legal analysis to determine the limitations that may exist in addition to these Regulation Z provisions. Resources provided by the ARRC can help card issuers identify the steps in that analysis. See LIBOR General FAQ 4 for more information on ARRC resources.

QUESTION 4:

Under Condition 2 of the Margin and Index Change Conditions, how does a card issuer determine if a potential replacement index has historical fluctuations that are substantially similar to those of the LIBOR index?

ANSWER (UPDATED 4/28/2023)**:**
As discussed above in LIBOR Credit Card FAQ 3, a card issuer may only replace the index on a credit card account if certain conditions are met. If using the Unavailable Provision or the LIBOR-Specific Provision, under the second condition, Historical Fluctuation Comparison, the card issuer generally must determine that the replacement index has historical fluctuations that are substantially similar to those of the LIBOR index being replaced, so long as the replacement index is not newly established. 12 CFR § 1026.55(b)(7)(i) and 55(b)(7)(ii).

Generally, for the Unavailable Provision, this means the card issuer must look at the historical fluctuations up through the date the index is unavailable. If the card issuer is using Prime and transitioning after April 1, 2022, the card issuer may rely on the CFPB's determination that this index has historical fluctuations that are substantially similar as of October 18, 2021, and need not complete further historical fluctuation analysis. Comment 55(b)(7)(i)-1.i. The identified USD IBOR Consumer Cash Fallbacks tenors to replace certain tenors of LIBOR have historical fluctuations that are substantially similar. Accordingly, a creditor using the applicable USD IBOR Consumer Cash Fallbacks tenors as the replacement index need not complete further historical fluctuation analysis when transitioning after April 1, 2022, (or after May 15, 2023, for 12-month LIBOR). Comment 55(b)(7)(i)-1.ii.

If using the LIBOR-Specific Provision, this means a card issuer must look at the historical fluctuations through April 1, 2022, or if the determination is made later, through the date that is 30 days prior to the date of the historical fluctuation determination made by the card issuer. If the card issuer is using Prime to replace certain tenors of LIBOR and transitioning after April 1, 2022, the card issuer may rely on the CFPB's determination that this index has historical fluctuations that are substantially similar as of October 18, 2021, and need not complete further historical fluctuation analysis. Comment 55(b)(7)(ii)-1.i. The identified USD IBOR Consumer Cash Fallbacks tenors to replace certain tenors of LIBOR have historical fluctuations that are substantially similar. Accordingly, a creditor using the applicable USD IBOR Consumer Cash Fallbacks tenors as the replacement index need not complete further historical fluctuation analysis when transitioning after April 1, 2022, (or after May 15, 2023, for 12-month LIBOR). Comment 55(b)(7)(ii)-1.ii.

Regulation Z provides factors that a card issuer must use when comparing historical fluctuations for purposes of the LIBOR transition. While the analysis for each index comparison will be unique, these factors highlight key concepts in determining whether a replacement index has historical fluctuations that are substantially similar to those of the particular LIBOR index being replaced. The non-exhaustive list of factors a card issuer must look at include whether:

- The movements (increases and decreases in value) of the two indices over time are substantially similar; and
- The consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar (if there is sufficient historical data for this analysis).

Comments 55(b)(7)(i)-1.iii and 55(b)(7)(ii)-1.iii.

Effective April 1, 2022, the CFPB has determined 1-month and 3-month Prime tenors meet the Historical Fluctuations Comparison condition when compared to their applicable tenors of LIBOR. The LIBOR Transition Rule provided an analysis the CFPB used to determine that Prime meets the criteria in Regulation Z for the Historical Fluctuation Comparison, as discussed above. Further, the Board's regulation implementing the LIBOR Act has determined that the USD IBOR Consumer Cash Fallbacks replacement tenors for 1-month, 3-month, 6-month and 12-month LIBOR also meet the Historical Fluctuations Comparison condition. For all other indices that are not newly established, card issuers will need to perform their own analysis, and determine if the replacement index meets this condition, as well as the other requirements in Regulation Z discussed above.

QUESTION 5:

What if the replacement index selected does not have historical fluctuations to compare to LIBOR for Condition 2 of the Margin and Index Change Conditions?

ANSWER (UPDATED 4/28/2023)**:**

As discussed above in LIBOR Credit Card FAQ 3, a card issuer may only replace the index on a credit card account if certain conditions are met. If using the Unavailable Provision or the LIBOR-Specific Provision, under the second condition, Historical Fluctuation Comparison, the card issuer must determine that the replacement index has historical fluctuations that are substantially similar to those of the LIBOR index being replaced, so long as the index is not newly established. 12 CFR § 1026.55(b)(7)(i) and 55(b)(7)(ii).

For purposes of the LIBOR Transition, if a card issuer selects a replacement index that is newly established, and therefore does not have historical fluctuations for comparison, the Historical Fluctuation Comparison condition does not apply. The newly established index may still be used as a replacement if it meets the third condition (APR Comparison), i.e., that it produces an APR substantially similar to the APR in effect when LIBOR becomes unavailable under the Unavailable Provision or, if using the LIBOR-Specific Provision, the APR calculated using the LIBOR index values generally on October 18, 2021. 12 CFR § 1026.55(b)(7)(i) and 55(b)(7)(ii). For more information on the APR Comparison condition, see LIBOR Credit Card FAQ 9, below.

"Newly established" is not defined in Regulation Z and is a fact-specific determination. For example, the CFPB does not consider the USD IBOR Consumer Cash Fallbacks index to be newly established, as used in Regulation Z. Although the USD IBOR Consumer Cash Fallbacks index tenors have not yet been published, these tenors will be based on an underlying SOFR rate, which has been published and therefore the tenors have rate history that can be used to determine the historical fluctuations.

QUESTION 6:

What indices are identified in Regulation Z as meeting Condition 2 of the Margin and Index Change Conditions for the LIBOR tenors?

ANSWER (UPDATED 4/28/2023)**:**

The LIBOR Transition Rule and Interim Final Rule provided examples of replacement indices that meet the Historical Fluctuation Comparison Condition, discussed above in LIBOR Credit Card FAQ 3, when replacing LIBOR indices for credit card products. The example indices provided include USD IBOR Consumer Cash Fallbacks and Prime. They would replace each of the following tenors of LIBOR as follows:

- **1-month LIBOR**: The 1-month tenors of Prime and USD IBOR Consumer Cash Fallbacks are examples of replacement indices for 1-month LIBOR.
- **3-month LIBOR**: The 3-month tenors of Prime and USD IBOR Consumer Cash Fallbacks are examples of replacement indices for 3-month LIBOR.
- **6-month LIBOR**: The 6-month USD IBOR Consumer Cash Fallbacks tenor is an example of a replacement index for 6-month LIBOR.
- **12-month LIBOR**: The 12-month USD IBOR Consumer Cash Fallbacks tenor is an example of a replacement index for 12-month LIBOR.

As stated, these indices are examples that meet the Historical Fluctuation Comparison condition. If a creditor uses one of these indices as a replacement for LIBOR, the creditor must still ensure that the replacement index and margin meets the other conditions discussed in LIBOR Credit Card FAQ 3.

Additionally, these are examples, but other indices may also meet the Historical Fluctuation Comparison condition. See LIBOR Credit Card FAQs 3 through 9 for more information on factors for determining if an index is an appropriate replacement for LIBOR during the transition.

QUESTION 7:

Is there an example index identified in Regulation Z as meeting Condition 2 of the Margin and Index Change Conditions for the 12-month LIBOR tenor?

ANSWER (UPDATED 4/28/2023)**:**

Yes. The 2023 LIBOR Transition Interim Final Rule identified the 12-month USD IBOR Consumer Cash Fallbacks tenor as an index that meets the Historical Fluctuation Comparison Condition for the 12-month LIBOR tenor. Comment 55(b)(7)(ii)-1.ii.

QUESTION 8:

Under Condition 3 of the Margin and Index Change Conditions, how does a card issuer determine if the APR under a potential replacement index is substantially similar to the APR under LIBOR?

ANSWER (UPDATED 4/28/2023)**:**

As discussed above in LIBOR Credit Card FAQ 3, a card issuer may only replace the index on a credit card account if certain conditions are met. If using the Unavailable Provision or the LIBOR-Specific Provision, under the third condition, APR Comparison, the card issuer must determine that the replacement index and margin will result in an APR substantially similar to the APR in effect at the time LIBOR becomes unavailable under the Unavailable Provision, or if using the LIBOR-Specific Provision, to the APR calculated using the LIBOR index value generally on October 18, 2021, with the applicable margin. 12 CFR § 1026.55(b)(7)(i) and 55(b)(7)(ii).

Under the Unavailable Provision, when comparing the APR, a card issuer generally must use the value of the replacement index and the LIBOR index on the day that LIBOR becomes unavailable and the margin applicable to the account at that time. Comment 55(b)(7)(i)-2. If the replacement index is not published on the date LIBOR is unavailable, generally the card issuer must use the index values applicable on the prior calendar day for which both the replacement index and the LIBOR index were published. The margin used is still that in effect just prior to when the change-in-terms notice identifying the replacement index is provided.

Under the LIBOR-Specific Provision, the card issuer generally must use the values of the indices in effect on October 18, 2021, and must use the margin in effect just prior to when the change-in-terms notice identifying the replacement index is provided. Comment 55(b)(7)(ii)-2. If the replacement index is not published on October 18, 2021, generally, the card issuer must use the index values applicable on the next calendar day for which both the replacement index and the LIBOR index are published. The margin used is still that in effect just prior to when the change-in-terms notice identifying the replacement index is provided.

Under both provisions, however, if the card issuer chooses the applicable USD IBOR Consumer Cash Fallbacks tenor to replace 1-month, 3-month, 6-month or 12-month LIBOR tenors, because the USD IBOR Consumer Cash Fallbacks tenors will not be published as of October 18, 2021, and may not be published at the time LIBOR is unavailable, the card issuer must instead use, with the respective margin values discussed above, the LIBOR index value as of

June 30, 2023, and the USD IBOR Consumer Cash Fallbacks tenor value as of the first day it is published, likely July 3, 2023. 12 CFR § 1026.55(b)(7)(ii).

Note that the comparison of the APRs is based on the index values specified above, and not on the index values when the replacement index is applied to the account (i.e., when a new interest rate based on the replacement index becomes effective on the account). Comments 55(b)(7)(i)-2 and 55(b()7)(ii)-2.

For either provision, if a card issuer uses the applicable USD IBOR Consumer Cash Fallbacks tenors to replace the 1-month, 3-month, 6-month or 12-month tenors of LIBOR, so long as the margin does not change from the margin in effect just prior to when the card issuer replaces the LIBOR index, the card issuer will be deemed to be in compliance with this third condition. Comments 55(b)(7)(i)-2 and 55(b)(7)(ii)-2. This is not available for transitions to Prime because, although Prime meets the Historical Fluctuation Comparison Condition for credit card products, the margin will need to be adjusted to accommodate the spread between LIBOR and Prime.

QUESTION 9:

What if the credit card issuer chooses to replace LIBOR prior to April 1, 2022?

ANSWER (UPDATED 12/7/2021)**:**

The LIBOR Transition Rule is not effective until April 1, 2022. If a card issuer chooses to replace LIBOR before April 1, 2022, they must comply with the version of Regulation Z in effect prior to April 1, 2022. For example, the card issuer would not be afforded the LIBOR-Specific Provisions discussed above.

QUESTION 10:

What if the credit card contract does not allow index replacement until LIBOR is unavailable?

ANSWER (UPDATED 12/7/2021)**:**

As discussed above in LIBOR Credit Card FAQ 3, a card issuer may only replace the index on a credit card account if certain conditions are met. Relevant to the LIBOR transition, two options for replacing the index for a credit card are: 1) when LIBOR is unavailable (Unavailable Provision) or 2) on or after April 1, 2022 (LIBOR-Specific Provision). Contractual language may limit which option in Regulation Z a card issuer may use, and which replacement indices may be selected. Contractual language may also require a card issuer to wait until LIBOR is unavailable before it replaces the index. Comment 55(b)(7)-1.

QUESTION 11:

When card issuers complete the LIBOR transition, are they required to complete rate reevaluations on the account?

ANSWER (UPDATED 12/7/2021)**:**

No, under certain circumstances. Generally under Regulation Z, 12 CFR § 1026.59(a), if a card issuer increases an APR that applies to a credit card account, triggering a change-in-terms notice or a penalty rate increase notice, the card issuer must review the account for certain factors and reduce the account APR, as appropriate. The card issuer must continue to review the account every 6 months (i.e., the rate reevaluation), until the APR is reduced at least to the APR applicable immediately prior to the increase. If the APR applicable immediately prior to the increase was a variable rate, then the APR must be reduced to a variable rate determined by the same formula (index and margin) that was used to calculate the rate applicable immediately prior to the increase.

The LIBOR Transition Rule provides a LIBOR-Specific Rate Reevaluation Exception for rate reevaluation requirements triggered by the LIBOR transition under certain circumstances. Effective April 1, 2022, if the card issuer completes the LIBOR transition by complying with the conditions required for using the LIBOR Transition Rule's Unavailable Provision or the LIBOR-Specific Provision, the card issuer is excepted from the rate reevaluation requirements for the rate increase that occur as a result of the LIBOR transition for replacement of the LIBOR index and any adjustment to the margin permitted under the Unavailable Provision or the LIBOR-specific Provision as applicable. 12 CFR § 1026.59(h). For more information on these provisions as they apply in the LIBOR transition, see LIBOR Credit Card FAQ 3, above.

Note that the LIBOR-Specific Rate Reevaluation Exception does not apply to rate increases that are already subject to the rate reevaluation requirements prior to the transition from the LIBOR index. Also, if the rate reevaluation requirements are triggered due to causes other than the transition, the card issuer must comply with the rate reevaluation requirements. For example, if the card issuer receives the LIBOR-Specific Rate Reevaluation Exception for the LIBOR transition, but then later increases the APR due to the consumer's credit risk at that time, the card issuer must then comply with the rate reevaluation requirements.

Further, the LIBOR-Specific Rate Reevaluation Exception does not apply prior to the effective date of the rule. Thus, if a card issuer transitions or otherwise replaced LIBOR prior to April 1, 2022, this exception does not apply.

Additionally, if a card issuer does not meet the conditions required for using the Unavailable or LIBOR-Specific Provisions, the LIBOR-Specific Rate Reevaluation Exception does not apply, and the card issuer must complete the rate reevaluation until a review determines it is no longer required. See LIBOR Credit Card FAQ 13 for more information about how to complete the rate reevaluations when LIBOR is unavailable.

QUESTION 12:

Does the LIBOR-Specific Rate Reevaluation Exception apply if the card issuer transitions from LIBOR prior to April 1, 2022?

ANSWER (UPDATED 12/7/2021)**:**

No. The LIBOR-Specific Rate Reevaluation Exception provided for in the LIBOR Transition Rule is only available beginning on April 1, 2022.

If the card issuer completes the transition prior to April 1, 2022, the condition that it identify a replacement index in accordance the LIBOR Transition Rule's Unavailable or LIBOR-Specific Provisions cannot be complied with, as they are not effective until April 1, 2022. Comment 59(h)-1. In such a case, the card issuer must complete the rate reevaluations. See LIBOR Credit Card FAQ 13 for more information about how to complete the rate reevaluations when LIBOR is unavailable.

QUESTION 13:

What index and margin do card issuers use to determine the benchmark comparison APR if the LIBOR-Specific Rate Reevaluation Exception does not apply?

ANSWER (UPDATED 4/28/2023)**:**

In certain cases, the LIBOR-Specific Rate Reevaluation Exception to the rate reevaluation requirements will not apply. For example, the card issuer may be performing rate reevaluations for a rate increase that occurred prior to April 1, 2022, using LIBOR as a benchmark index for comparison. As a result, the card issuer will be required to continue to perform rate reevaluations until the APR is reduced as required even after LIBOR is unavailable.

In this case, the index used for the benchmark of comparison depends on when the next review is scheduled.

If the next review is scheduled prior to April 1, 2022, the card issuer continues to use LIBOR as a benchmark.

However, if the next review is scheduled on or after April 1, 2022, the card issuer may use the replacement formula for comparison specified in the LIBOR Transition Rule. 12 CFR § 1026.59(f)(3). The replacement formula allows the card issuer to obtain a benchmark comparison APR using a "replacement benchmark index" (that is not a LIBOR index) so that it may continue to identify the benchmark APR to which the account must be reduced in order to determine if it may terminate its obligation to complete rate reevaluations.

To use the replacement formula to determine the benchmark comparison APR, a card issuer identifies the value of LIBOR on October 18, 2021 and the account's margin prior to the increase. It also identifies the value of the replacement benchmark index being used for the replacement formula on October 18, 2021. If LIBOR or the replacement index are not available on October 18, 2021, the card issuer identifies the value of the indices on the first day after October 18, 2021 that the values of both indices are available. However, if the card issuer is using a USD IBOR Consumer Cash Fallbacks tenor to replace LIBOR, it must use the LIBOR value on June 30, 2023, and the USD IBOR Consumer Cash Fallbacks tenor value from the first day the index will be published, likely July 3, 2023.

Once the card issuer identifies the appropriate index values for the formula, the card issuer can then determine the replacement margin needed to provide an equal APR. That replacement margin is used with the replacement benchmark index as a formula to identify the benchmark APR of comparison for each future review.

Thus, the replacement formula is as follows:

> ["replacement index" value on October 18, 2021 (or other applicable date)] + [replacement margin] = [LIBOR index value on October 18, 2021 (or other applicable date)] + [account margin prior to increase]

12 CFR § 1026.59(f)(3).

For example, assume a card issuer changed the account index from a LIBOR index in 2019. Thus, the account is not eligible for the LIBOR-Specific Rate Reevaluation Exception, and the creditor is still required to complete rate reevaluations. The next rate reevaluation is scheduled for April 1, 2022. Previously, to determine benchmark of comparison using the LIBOR index, the card issuer used the formula "LIBOR index value plus 10% margin." For the card issuer to transition from the LIBOR index as the benchmark index for the comparison, the card issuer will need to use the replacement formula discussed above. First, the card issuer determines the LIBOR-based values. Assume the LIBOR-based benchmark comparison APR is 12%, resulting from a LIBOR index value of 2% on October 18, 2021, plus a 10% margin (the margin in effect prior to the increase). Next, the card issuer determines the replacement values. Applying these facts, under the replacement formula the replacement index and margin must equal a 12% APR as well. Assume for purposes of the replacement formula, the card issuer selects Prime as the replacement benchmark index. If the Prime index value is 4% on October 18, 2021, then the replacement margin must be 8%. Thus, the new benchmark for comparison formula for determining whether the card issuer can terminate its rate reevaluation obligation going forward is "Prime value for each review plus 8% margin." Comment 59(f)(3)-3.

The replacement index used in the replacement rate reevaluation formula must satisfy the conditions in the **LIBOR-Specific Provision** discussed in LIBOR Credit Card FAQ 3 above.

Note, however, that "replacement index" as used in the formula is not the index for the account, but is the index used specifically for the formula. 12 CFR § 1026.59(f)(3); Comment 59(f)-4. For example, a card issuer transitioning from LIBOR after April 1, 2022, may select Prime as the replacement index for LIBOR for purposes of the rate reevaluations, and may select the USD IBOR Consumer Cash Fallbacks index as the replacement index for LIBOR for setting the variable rates on the account.