



Housing Policy Council
1750 K Street NW Suite 300
Washington, DC 20006
202-589-1923
www.housingpolicycouncil.org

August 3, 2020

Honorable Kathy Kraninger
Director
Consumer Financial Protection Bureau (CFPB)
1700 G Street, NW
Washington, DC 20552

Re: RIN 3170-AB01; Facilitating the LIBOR Transition (Regulation Z)

Director Kraninger:

Thank you for the opportunity to comment on the CFPB's Notice of Proposed Rulemaking on facilitating the LIBOR transition¹. The Housing Policy Council (HPC)² supports the CFPB's efforts to ensure a smooth transition from LIBOR to alternative reference rates, including the Secured Overnight Financing Rate (SOFR), for consumers who hold adjustable rate mortgages (ARMs).

In December of last year HPC sent a letter to several regulators, including the CFPB³, raising the concern that the transition away from LIBOR could be a source of confusion for consumers and that consumer misperceptions regarding required changes to contract terms could lead to lawsuits against lenders, servicers, and/or investors. To alleviate confusion, HPC requested that the CFPB review "provisions in Regulation Z that relate to the use of an index and margin in ARMs or home equity products, and, if necessary, propose changes in those provisions to accommodate the transition from LIBOR to SOFR or other reference rates."

The proposed rule and additional consumer information address many of the core issues that HPC raised last year, but we respectfully request that the Bureau consider additional regulatory clarification regarding the transition to alternative reference rates under the Unfair, Deceptive,

¹ 85 Fed. Reg. 36938, June 18, 2020.

² The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers, mortgage and title insurers, and technology and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families.

³ See [HPC Letter to Financial Regulators on Libor Transition](#), December 20, 2019.

or Abusive Acts or Practices (UDAAP) regulations. Our thoughts on these topics are described below.

Updates to CHARM Booklet and FAQs are Welcome

HPC is very appreciative of the CFPB's proposed rule, which accomplishes a key objective of HPC's request, providing clarity about the LIBOR transition to lenders, servicers, investors, and most importantly consumers. In addition to the proposed rule itself, we commend the CFPB's efforts to help consumers understand how adjustable rate mortgages work through the updates to the Consumer Handbook on Adjustable Rate Mortgages (CHARM), and by issuing enhanced guidance (FAQs) on other important LIBOR transition topics that do not require amendments to Regulation Z. By dramatically reducing the number of pages in the CHARM handbook and updating the booklet to remove references to the LIBOR benchmark rate, the CFPB has made these resources more relevant and useful for consumers and other market participants.

Proposed Rule Illustrative Examples Provide Useful Clarity

As for the proposed rule itself, HPC applauds the inclusion of examples of replacement indices that meet Regulation Z standards, such as SOFR (for closed and open-end transactions) and Prime (for open-end transactions). Specifically, HPC supports the CFPB's determination that the spread-adjusted indices based on SOFR recommended by the ARRC as a replacement for the 1-month, 3-month, 6-month, and 1-year USD LIBOR index are comparable indices to the 1-month, 3-month, 6-month, and 1-year USD LIBOR index respectively for closed-end transactions. This determination provides much needed clarity and certainty to market participants and should be retained in the final rule. HPC also supports the CFPB's determination that this example "would be illustrative only, and the Bureau does not intend to suggest that the spread-adjusted SOFR indices recommended by the ARRC are the only indices that would be comparable to the LIBOR indices."⁴ To further illuminate the issue, HPC requests that the CFPB consider adding some additional examples of comparable indices for closed-end transactions to help stakeholders operationalize the guidance. Additionally, HPC requests that the CFPB consider addressing the historical and mathematical elements that should be part of a finding of comparability when adding an illustrative example that identifies a Prime Rate index as comparable to LIBOR for closed-end transactions. The goal should be to provide market participants actionable guidance regarding how the CFPB will consider other indices comparable and address compliance with UDAAP rules.

Lastly, it would be helpful for the CFPB to add an example of how to complete the loan estimate or closing disclosures for a SOFR product. By making these appropriate modifications

⁴ 85 Fed. Reg. 36947, June 18, 2020.

to Regulation Z, it reduces the potential for consumer complaints or legal challenges based upon the transition away from LIBOR.

Disclosure Requirements Regarding Post-Consummation Events § 1026.20(a)-3

HPC proposes that the CFPB add to the Official Interpretation for § 1026.20(a)-3,ii.B an additional example of an event that would not be treated as a refinance. The current proposal says that spread-adjusted SOFR is “comparable” to LIBOR and therefore the replacement of LIBOR with a spread adjusted index based on SOFR is not to be treated as a refinancing. The proposed text in the comments section uses the word “comparable,” a term used in some of our members’ old ARM fallback language. However, the more commonly used fallback language today, included in recent ARM transactions, instead refers to a replacement index chosen by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee endorsed by either of them. If a replacement index has not been chosen by any of those entities, such language provides that the note holder will make a reasonable, good faith effort to select an index and a margin that, when added together, the note holder reasonably expects will minimize any change in the cost of the loan, taking into account the historical performance of the index and the replacement index. This language was recommended by the ARRC and adopted by Fannie Mae and Freddie Mac. It would be helpful for the CFPB to clarify in the Official Interpretation of the final rule that the determination of a replacement index pursuant to this commonly used contract language is another example where the replacement index would be “comparable” and, accordingly, would also not be deemed a refinance under Regulation Z.

Reiteration of Request to Address UDAAP Concerns

As helpful as the proposed modifications to Regulation Z are, to further ameliorate the concerns of market participants about the transition away from LIBOR, we reiterate our previous request for the CFPB to state unequivocally in guidance that it will not deem a transition to a spread adjusted index based on SOFR or any other comparable index to be an unfair, deceptive, or abusive act or practice. Since the proposed rule already deems a spread adjusted index based on SOFR to be a comparable index, our request is to follow the logical conclusion of this determination by simply and unambiguously stating that the use of a spread adjusted index based on SOFR as a comparable index is not unfair or abusive, and that the selection of a spread adjusted index based on SOFR or other comparable indices as a replacement index to LIBOR is not deceptive. We also request that the CFPB state that it will not deem an index that is recommended by the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, or a committee endorsed or convened by either of them, or an index that the note holder reasonably expects will minimize any change in the cost of the loan, taking into account the historical performance of the index and the

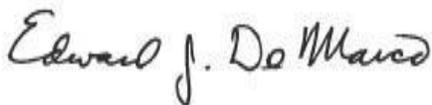
replacement index, to be an unfair, deceptive or abusive act or practice, and would not take any action with respect to a market participant on that basis.

While such statements by the CFPB would not eliminate potential legal challenges to the use of a spread adjusted index based on SOFR or appropriate alternative reference rates by mortgage lenders or other market participants, such declarations will help to provide a degree of comfort to market participants and encourage them to consider reasoned ARRC recommendations and to adopt actions contributing to the transition from LIBOR that add stability to the industry and are considerate of consumer impacts. Any such statement, however, should not prejudice the adoption of any appropriate alternative to a spread adjusted index based on SOFR that is used in connection with ARMs (e.g., a Constant Maturity Treasury rate that is deemed to be compliant with the standards set forth by the International Organization of Securities Commissions).

HPC and its members support the CFPB's efforts to ensure a smooth transition from LIBOR to the spread adjusted index based on SOFR or other appropriate alternative reference rates for consumers who hold adjustable rate mortgages (ARMs). This rulemaking is a critical step to facilitate compliance by lenders and servicers and reduce the potential for adverse consumer impact and the market instability resulting from expected legal challenges based upon the transition.

If you have any questions or would like to discuss these comments, please contact Matt Douglas, Vice President of Mortgage Policy, at 202-589-1924.

Yours truly,

A handwritten signature in black ink that reads "Edward J. DeMarco". The signature is written in a cursive style with a large initial "E" and "D".

Edward J. DeMarco
President
Housing Policy Council