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Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20051

Honorable Kathy Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, NW
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Honorable Jelena McWilliams
Chairman
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Mr. Seth Appleton
Principal Executive Vice President
Ginnie Mae
U.S. Department of Housing and Urban Development
451 7th Street, NW
Washington, DC 20410

Honorable Joseph Otting
Comptroller
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

Honorable Benjamin S. Carson
Secretary
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451 7th Street, NW
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Honorable Mark Calabria
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Federal Housing Finance Agency
Constitution Center
400 7th Street, NW

Mr. John Ryan
President and Chief Executive Officer
Conference of State Bank Supervisors
1129 20th St NW
Washington, DC 20036

Dear Ladies and Gentlemen:

The members of the Housing Policy Council (HPC)[1] appreciate your efforts to ensure a smooth transition from LIBOR to the Secured Overnight Financing Rate (SOFR) or alternative reference rates for consumers who hold adjustable rate mortgages (ARMs). We write to provide an update on what we believe are some of the critical outstanding issues regarding a smooth transition to alternative reference rates.

[1] The Housing Policy Council (HPC) is a trade association whose members are among the nation's leading mortgage originators, servicers, insurers & data/settlement service providers. HPC advocates for a competitive marketplace that embraces accountability, transparency and consistency. The association's interest is in the safety and soundness of this system, equitable regulatory treatment of all market participants, and reliance on lending practices that create sustainable home ownership opportunities leading to long-term wealth and community building for families. The members of HPC are committed to working with all stakeholders to realize a resilient housing finance system that expands opportunity, improves the customer experience and operates efficiently and safely. For more information, visit https://www.housingpolicycouncil.org/.

We recognize that a great deal of progress has been made in recent years by the Alternative Reference Rates Committee (ARRC), which will provide a strong foundation for this transition. Yet, we believe that, in addition to actions already undertaken, there are further actions your agencies should take to ensure a more orderly transition for these products. Our recommended actions are listed below.

One of the benefits of the ARRC is that it involves the joint participation of industry representatives, other key stakeholders, and regulators in an organized and coordinated manner. We urge that you take the actions suggested in this letter in a similarly coordinated manner to minimize policy conflicts and to facilitate acceptance of SOFR or other alternative reference rates. An integrated approach from your agencies will enhance the ability of market participants to prepare for the transition and to facilitate consistent and timely communication with customers.

The regulators that participate in the ARRC should continue to work with the ARRC to finalize a spread adjustment between LIBOR and SOFR, and to develop a term SOFR for ARMs.

In an effort to apply the SOFR index to ARMs, the ARRC developed a model for new products that would use a 30-day or 90-day average of SOFR which would be adjusted every six months.[2] The ARRC also recommended "fallback" language to use in new ARM contracts following a fixed-rate period.[3] Both of these developments help to mitigate the risk associated with the LIBOR transition. We recommend that you take additional actions to encourage industry adoption of the fallback language since products continue to be originated in the market on a LIBOR basis, without clear "fallback" language.

Additionally, ARRC is planning to develop a "replacement index," inclusive of a spread adjustment for existing LIBOR-based ARMs for use when such ARMs fall back from LIBOR to SOFR. The spread adjustment should reflect the historical run rate difference between LIBOR and SOFR proximate to the time of the fallback. We urge the regulators that participate in the ARRC to work with ARRC members to finalize this spread-adjustment methodology for LIBOR-based ARMs as soon as possible. Establishing a rules-based approach for replacement index calibration, well ahead of LIBOR cessation, will facilitate the transition for such products.

The regulators that participate in the ARRC also should provide any needed assistance to the ARRC to aid in the development of term SOFR. Most ARMs are tied to a 1-year LIBOR rate, and, as such, mortgage borrowers are likely to view a term SOFR as a more understandable substitute for LIBOR. In the interim, the ARRC published SOFR-based structure will be implemented by Fannie Mae and Freddie Mac (the

[2] Options for Using SOFR in Adjustable Rate Mortgages, Alternative Reference Rates Committee, July 2019.
[3] ARRC Recommendations Regarding More Robust LIBOR Fall Contract Language for New Closed-End, Residential Adjustable Rate Mortgages, November 15, 2019.

GSEs). We realize that the availability of term SOFR is contingent upon the development of a market in SOFR derivatives upon which the term rates can be based.

Financial regulators should provide greater clarity on the trigger for transitioning from LIBOR to SOFR or other alternative reference rates.

Generally, legacy ARMs permit a switch from LIBOR to another reference rate only when LIBOR is "unavailable." There is significant uncertainty, however, as to when LIBOR will be "unavailable." This uncertainty is creating confusion among firms and poses a risk to an orderly transition for LIBOR ARMs to SOFR or other reference rates.

The U.K.'s Financial Conduct Authority (FCA) has stated that it will not compel the LIBOR panel banks to submit data beyond December 31, 2021.[4] Moreover, both U.S. and U.K. financial authorities have warned that LIBOR may no longer be available after the end of 2021.[5] Nonetheless, the ARRC has acknowledged that LIBOR could continue to be published beyond that date[6] and ICE Benchmark Administration (IBA), which administers LIBOR, has stated that it "hopes" to continue to publish LIBOR beyond December 31, 2021.[7] It is also possible that certain tenors of LIBOR could cease publication prior to other tenors.

To address this uncertainty, we urge you, in cooperation with the FCA, to clarify the impact on U.S. firms of any FCA announcement that LIBOR is no longer "representative" of market conditions under the terms of the European Benchmark Regulation.[8] U.S. firms need clarity as to how their regulators will view a "non-representative" rate, how they expect regulated firms to transact or not transact in it, and any prudential or other impacts from such a determination by the FCA. This clarity also could involve your agencies making a corresponding announcement regarding reliance on LIBOR and whether it should be treated as "no longer available" as an index for ARMs or other consumer products. Such clarity would give firms an unambiguous target for making needed changes in policies, procedures, and systems to accommodate the transition.

The transition from LIBOR also can be facilitated by a unified, consistent message across jurisdictions. Greater cross-jurisdictional coordination is needed to enhance the consistency of fallbacks and their triggers by product type and to minimize

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[4] Statement on LIBOR Panels, Financial Conduct Authority, November 24, 2017.
[5] John C. Williams, President and CEO, Federal Reserve Bank of New York, LIBOR: The Clock is Ticking, September 23, 2019 ("Everyone in the financial services industry needs to be aware that the date when the existence of LIBOR can no longer be guaranteed is fast approaching."); Andrew Bailey, Chief Executive, Financial Conduct Authority, July 15, 2019 ("I urge you not to have misplaced confidence that LIBOR as it exists today will survive.")
[6] Second Report, Alternative Reference Rates Committee, March 2018, p. 7.
[7] ICE LIBOR Evolution, ICE Benchmark Administration Limited, April 25, 2018, p. 3.
[8] REGULATION (EU) 2016/1011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014, June 8, 2016.

value transfer. The Financial Stability Board is well positioned to take a leading role in the cross-jurisdictional coordination.

The Federal Housing Finance Agency (FHFA) and Ginnie Mae should develop and release strategic plans for the transition from LIBOR to SOFR or other alternative reference rates.

Since 2010, FHFA has issued strategic plans in connection with the conservatorships of the GSEs, the launch of new credit risk transfer programs, and the development of the Uniform Mortgage-Backed Security. These plans have provided market participants with an understanding of the agency's policy priorities and set timelines for the implementation of those policies. They also have served as essential tools to align industry participants including investors, software and data vendors, and other critical infrastructure service providers, in delivering a successful and uneventful transition. As such, we recommend that FHFA and Ginnie Mae develop and publish similar strategic plans for the transition away from LIBOR, an initiative that is listed in FHFA's 2020 Conservatorship Scorecard. The publication of these plans would help our members and other market participants prepare for the transition.

Guidance from FHFA is especially important since FHFA is the regulator of the two largest owners ("Note Holders") of ARMs. Guidance from FHFA and the GSEs will constitute direction from the Note Holders to the servicers of those notes and will help to establish industry servicing standards for non-GSE-owned, LIBOR-indexed ARMs, and the smoothest possible transition for mortgage borrowers.

The strategic plans developed by FHFA and Ginnie Mae should: (1) address the timetable for changes in loan documentation and reporting; (2) describe a staged approach to phase out the purchase/securitization of LIBOR-indexed loans that considers the importance of GSE and Ginnie Mae liquidity in the market; (3) clarify that the index published by the ARRC that includes SOFR plus an spread adjustment is considered to be an appropriate replacement index for LIBOR for ARM purposes and is considered to be "based upon comparable information;" (4) include guidance regarding notification to LIBOR ARM customers regarding the transition (i.e., form, content, and timing) that is not in conflict with Regulation Z notification requirements; and (5) include a standard for implementation procedures for the transition.

Additionally, in connection with the publication of these plans, we recommend that FHFA and Ginnie Mae sponsor industry-wide "readiness" conferences to address operational issues associated with the transition. Ginnie Mae also should participate in the ARRC as an ex officio member, to ensure that the agency is engaged in the ARRC policy dialogue.

The Consumer Financial Protection Bureau (CFPB) should take formal actions to facilitate the transition to SOFR or other alternative reference rates.

The transition away from LIBOR may be a source of confusion for consumers and could lead to lawsuits against lenders, servicers, and/or investors. Not surprisingly, the potential that market participants may face legal challenges resulting from the switch to another reference rate is a significant impediment to an orderly transition away from LIBOR. To minimize these potential risks and facilitate the transition, we recommend that the CFPB assist all market participants, and particularly consumers, by:

- Continuing to sponsor informational sessions and workshops with consumer, civil rights, and fair lending organizations to explain SOFR, including the operation of a spread adjustment and fallback language. Such sessions will help to avoid misunderstandings about the impact of the transition to consumers, and would help promote the acceptance of SOFR;

- Formally stating that the CFPB would not deem a SOFR index or SOFR-based rate for ARMs that is recommended by the Federal Reserve Board, the Federal Reserve Bank of New York, or a committee endorsed or convened by the Federal Reserve Board or Federal Reserve Bank of New York to be unfair, deceptive or abusive and would not take any action with respect to a market participant on that basis. While such a statement would not eliminate potential legal challenges to the use of SOFR by mortgage lenders or other market participants, it should help to reduce legal challenges related to the adoption of SOFR and encourage market participants to adopt ARRC recommendations. Any such statement, however, should not prejudice the adoption of any alternative to 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); and

- Reviewing provisions in Regulation Z that relate to the use of an index and margin in ARMs or home equity products, and, if necessary, proposing changes in those provisions to accommodate the transition from LIBOR to SOFR[9] or other reference rates. Making appropriate modifications to Regulation Z also would enhance compliance by lenders and servicers and further reduce the potential for consumer complaints or legal challenges based upon the transition.

The Conference of State Bank Supervisors (CSBS) should coordinate state actions related to the LIBOR transition with federal financial regulators.

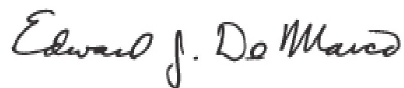
CSBS has a long-standing tradition of cooperating with federal financial regulators on policy matters, especially through its participation in the Federal Financial Institutions Examination Council. In keeping with this tradition, we recommend that CSBS coordinate state policy actions related to the LIBOR transition with the actions of federal financial regulators. This would reduce the potential for policy conflict between state and federal authorities.

[9] For example, Regulation Z includes an optional disclosure that requires an illustration of the operation of an index over a period of years. That provision may not be workable in the context of a new index such as SOFR.

Conclusion

In summary, coordinated actions by your agencies can play a pivotal role in assisting market participants with the transition away from LIBOR. Most importantly, through your participation in ARRC, you can help to finalize the spread adjustment methodology, and either endorse the methodology or publicly acknowledge that the spread adjusted rate is appropriate as a replacement rate for LIBOR. We welcome your joint engagement, and if you have any questions about the recommendations made in this letter, please do not hesitate to contact Ed DeMarco at 202-589-1922.

Yours Truly,



Edward J. DeMarco
President
Housing Policy Council

CC: Honorable Steven Mnuchin, Secretary of the Treasury and Chairman of the Financial Stability Oversight Council
Andrew Bailey, CEO, Financial Conduct Authority