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ARRC Releases a Proposal for New York State Legislation for U.S. Dollar LIBOR Contracts

Legislative Proposal Aims to Minimize Legal Uncertainty and Adverse Economic Impact Associated with LIBOR Transition

The Alternative Reference Rates Committee (ARRC) today released a proposal for New York State legislation, which is intended to minimize legal uncertainty and adverse economic impacts associated with LIBOR transition. The ARRC is publishing this proposed legislation to promote broader engagement.

Many financial contracts referencing LIBOR do not envision a permanent or indefinite cessation of LIBOR. Therefore, existing contracts either do not have fallback language that adequately addresses a permanent LIBOR cessation or have language that could dramatically alter the economics of contract terms if LIBOR is discontinued. Although existing contracts may be amended, such an amendment process might be challenging, if not impossible, for certain products. The ARRC proposes New York State legislation to address this issue because a substantial number of financial contracts that reference U.S. dollar LIBOR are governed by New York law.

The proposed legislation would:

- prohibit a party from refusing to perform its contractual obligations or declaring a breach of contract as a result of LIBOR discontinuance or the use of the legislation's recommended benchmark replacement;
- establish that the recommended benchmark replacement is a commercially reasonable substitute for and a commercially substantial equivalent to LIBOR; and
- provide a safe harbor from litigation for the use of the recommended benchmark replacement.

Specifically, the proposed legislation, on a **mandatory** basis, would:

- override existing fallback language that references a LIBOR-based rate and instead require the use of the legislation's recommended benchmark replacement;
- nullify existing fallback language that requires polling for LIBOR or other interbank funding rates; and
- insert the recommended benchmark replacement as the LIBOR fallback in contracts that do not have any existing fallback language.

The proposed legislation would also, on a **permissive** basis, allow:

- parties with the right to exercise discretion or judgment regarding the fallback rate to avail themselves of the litigation safe harbor if they select the recommended benchmark replacement as the fallback rate; and
- parties to mutually opt-out of any mandatory application of the proposed legislation, at any time.

Importantly, however, the proposed legislation would <u>not</u> override existing contract language that specifies a non-LIBOR based rate as a fallback to LIBOR (e.g., the Prime rate).

Webinar
In the coming weeks, the ARRC plans to host a webinar to provide an in-depth overview of the proposed legislation. Details will be published separately on the ARRC's website.

About the ARRC

The ARRC is a group of private-market participants convened by the Federal Reserve Board and Federal Reserve Bank of New York in cooperation with the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Office of Financial Research, the Office of the Comptroller of the Currency, the Commodity Futures Trading Commission, the Securities and Exchange Commission and the U.S. Treasury Department. It was initially convened in 2014 to identify risk-free alternative reference rates for U.S. dollar (USD) LIBOR, identify best practices for contract robustness, and create an implementation plan with metrics of success and a timeline to support an orderly adoption. The ARRC accomplished its first set of objectives and identified the SOFR as the rate that represents best practice for use in certain new USD derivatives and other financial contracts. It also published its Paced Transition Plan, with specific steps and timelines designed to encourage adoption of the SOFR. The ARRC was reconstituted in 2018 with an expanded membership to help to ensure the successful implementation of the Paced Transition Plan, address the increased risk that LIBOR may not exist beyond 2021, and serve as a forum to coordinate and track planning across cash and derivatives products and market participants currently using USD LIBOR.

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