

August 4, 2020

Hon. Kathleen Kraninger
Comment Intake
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: Notice of Proposed Rulemaking – Facilitating the LIBOR Transition (Regulation Z), Docket No. CFPB-2020-0014

Dear Director Kraninger,

The American Financial Services Association (AFSA)¹ appreciates the opportunity to submit comments on the Consumer Financial Protection Bureau’s (CFPB) proposed rule to amend Regulation Z to facilitate LIBOR’s transition (Proposed Rule). AFSA commends the CFPB for promulgating this rulemaking, which will address the uncertainty inherent in the transition away from LIBOR. A smooth transition from LIBOR to appropriate replacement indices would help support transparency and prevent disruptions in the credit market.

We hope the CFPB will move quickly to finalize the Proposed Rule, as guidance issued well in advance of the expected 2021 LIBOR transition date is critical to avoid market disruptions. An adequate transition period is necessary because financial institutions will need time to transition to the new indices, and the public and consumers will be better informed if proper time is allotted.

Importantly, the Proposed Rule provides flexibility, allowing financial institutions to select replacement indices, subject to certain requirements. Moreover, the disclosure requirements in the Proposed Rule will help consumers understand changes they may see as a result of the move away from LIBOR. Lastly, the Proposed Rule includes an important exception for open-end creditors. AFSA encourages the CFPB to finalize, as proposed, the provisions specific to credit card issuers including the provision stating that credit card issuers would not have to comply with the requirements to analyze the rate increases every six months until the rate is sufficiently reduced, with certain provisions.

We support the Proposed Rule and have three suggestions to improve it (though consideration of these should not materially delay a final rule). First, to ensure transparency for consumers and creditors, AFSA suggests that the CFPB provide guidance on the methodology for determining that a replacement index is “comparable” in the context of certain refinancing-related provisions applicable to closed-end credit. Second, we suggest that the CFPB include additional examples of a “comparable index” in the final rule. Third, we suggest that for closed-end credit, the CFPB make it clearer that when a creditor replaces the existing index with a comparable index that has been spread-adjusted to reflect the historical fluctuations that are substantially similar, this is not an alteration that triggers redisclosure.

¹ AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with closed-end and open-end credit products including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

The CFPB’s Proposed Rule includes open-end credit provisions for HELOC creditors and card issuers as they transition away from LIBOR. Specifically, the Proposed Rule mandates that the replacement index have “historical fluctuations substantially similar” to LIBOR if the creditor selects a replacement index with a history as opposed to a newly established index. In the open-end credit portion of the Proposed Rule, the Prime Rate published in the Wall Street Journal (Prime), and certain spread-adjusted indices based on the Secured Overnight Financing Rate (SOFR), are provided as examples of replacement indices with historical fluctuations substantially similar to LIBOR.

However, for closed-end products, what qualifies as a “comparable” replacement index is not as clear. Under the Proposed Rule, if a closed-end creditor changes the index of a variable-rate product to an index that is not a “comparable index,” the change may constitute a refinancing for purposes of Regulation Z, and in turn, trigger certain requirements. The CFPB proposes an illustrative example of a “comparable index” using SOFR-based spread-adjusted indices. In any final rule, AFSA strongly supports the inclusion of guidance for institutions in determining if an index is comparable and commentary as to the specific characteristics of a comparable index. While AFSA appreciates the CFPB’s illustrative example of SOFR-based replacement indices in the closed-end provisions, we support providing additional examples of comparable indices in a final rule. AFSA supports the CFPB’s proposal to include the Prime and certain SOFR-based indices as replacement indices in the open-credit provisions, but would suggest that the Prime also be explicitly included as a substitute index for closed-end credit (including ARMs) also. If it is a suitable substitute index for HELOCs, then it should be a suitable substitution index for closed-end credit products.

AFSA also recommends that the CFPB provide guidance on when LIBOR becomes “unavailable.” The United Kingdom’s Financial Conduct Authority (FCA) in 2017 announced that after year end 2021, it would no longer compel banks to submit the rates to calculate LIBOR. We are concerned that the fact that banks need not submit the rates to calculate LIBOR does not necessarily mean LIBOR is unavailable. It would be helpful to all industries replacing LIBOR for the CFPB to make a determination that after year end 2021, LIBOR is unavailable, and provide a timeline for notifications to consumers of the change to a new index and margin.

As the expected 2021 LIBOR transition date nears, it is imperative that the CFPB promote transparency and ensure the smooth transition away from LIBOR. Guidance for creditors on selecting replacement indices well in advance of the transition date in a final rule will help ensure this.

AFSA appreciates the CFPB’s attention to these issues. Please do not hesitate to contact me at 202-776-7300 or cwinslow@afsamail.org with any questions.

Sincerely,



Celia Winslow
Senior Vice President
American Financial Services Association