3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

August 4, 2020

Comment Intake—LIBOR
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

RE: Facilitating the LIBOR Transition (Regulation Z)
Docket No. CFPB-2020-0014

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to express our support for the proposed amendments to Regulation Z to ease the transition from the London Interbank Offered Rate (LIBOR) to replacement indices. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 121 million consumers with personal and small business financial service products. With the LIBOR expected to sunset sometime after 2021, the Bureau must lay the groundwork for an orderly and efficient transition to alternative rate indices. In general, the proposed framework for facilitating this transition will resolve technical difficulties that exist under Regulation Z, which currently imposes compliance obligations that are difficult or potentially impossible to discharge in a post-LIBOR environment.

Accordingly, NAFCU supports the Bureau's determination that the prime rate published in the Wall Street Journal (Prime) has historical fluctuations substantially similar to those of certain U.S. Dollar (USD) LIBOR indices. NAFCU also supports the determination that certain spread-adjusted indices based on the Secured Overnight Financing Rate (SOFR) recommended by the Federal Reserve Board's Alternative Reference Rates Committee (ARRC) have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. The Bureau should also consider designating other rate indices as appropriate replacements if recommended by the Federal Reserve.

General Comments

Not all credit unions rely on LIBOR as a rate index. For those that do, the amendments provide additional clarity and flexibility to support the transition process. Of most value to NAFCU's members are the provisions that would allow a credit union to select and transition to a replacement index prior to the LIBOR index becoming "unavailable." NAFCU also appreciates the inclusion of example indices that are deemed "substantially similar" to LIBOR, clarification of the content and timing of required disclosures, and technical updates to ensure, among other things, that card issuers are not required to needlessly evaluate their decision to transition away from LIBOR when there is no possibility of returning to that rate index.

To reduce the possibility of confusion during the transition process, NAFCU recommends that the Bureau consider ways to alleviate risks to financial institutions if their contracts lack flexible fallback language for switching to a new rate index. As noted in the preamble, "creditors whose contracts require them to wait until the LIBOR indices become unavailable before replacing the LIBOR index essentially would remain in the same position of interpreting their contracts as they would have been under the current rule."[1]

The Bureau has suggested that one possible approach for resolving contractual uncertainty would be to deem the LIBOR as "unavailable" at a particular point in time; however, the Bureau also notes, and NAFCU generally agrees, that such a determination would only clarify regulatory obligations rather than contractual responsibilities. Given the potential range of difficulties in unwinding certain contracts that rely on LIBOR, NAFCU recommends that the Bureau adopt a supervisory policy that accommodates reasonable, good faith interpretations of contract language that refers to the unavailability of the LIBOR. The Bureau should also disfavor the use of enforcement actions against institutions who have made good faith efforts to comply with the disclosure rules applicable to the transition process.

Economic uncertainty resulting from the pandemic could also contribute to increased volatility in the SOFR, which could make it more difficult for credit unions to execute an early transition before the end of 2021.[2] Some credit unions that use the LIBOR as a rate index have expressed concern that transitioning to SOFR could result in increased costs for consumers, particularly at a time when many households are experiencing financial stress linked to COVID-19. As credit unions consider different strategies for exiting LIBOR, the Bureau should seek to accommodate other transition options and rate indices that satisfy the "substantially similar" criteria. In addition, the Bureau should not deem alternative rate indices as unfair, deceptive, or abusive if recommended by the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, or a committee convened by or on behalf of the Federal Reserve System.

Lastly, the Bureau should develop small entity compliance resources to help credit unions navigate the proposed transition options and disclosure requirements. These resources should also cross-reference current and future guidance issued by the FFIEC regarding the transition process for products covered under the proposal.

Conclusion

NAFCU appreciates the opportunity to comment on the Bureau's proposal for facilitating an orderly transition from the LIBOR to replacement rate indices. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2266 or amorris@nafcu.org.

---

[1] CFPB, Facilitating the LIBOR Transition (Regulation Z), 85 Fed. Reg. 36938, 36949.
[2] *See* Reuters, "Coronavirus pandemic could slow loan market transition from Libor," April 13, 2020, available at https://www.reuters.com/article/libor-spreadadjustment/coronavirus-pandemic-could-slow-loan-market-transition-from-libor-idUSL2N2C11FN.

Sincerely,

Andrew Morris
Senior Counsel for Research and Policy