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# LIBOR: post-cessation reminders

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Six years after the UK Financial Conduct Authority announced that LIBOR would be phased out, and after 37 years as the standard rate for US dollar loans, the last panel submissions for LIBOR were made on June 30. This important transition landmark occurred with little fanfare, and most commercial loans have now made the switch to an alternate rate (the vast majority to Term SOFR), either via a negotiated amendment or by virtue of "LIBOR replacement" provisions.

It is important to note, however, that financial markets are not quite done with LIBOR yet, as there are still a small percentage LIBOR-based loans that have not been amended.[1] A few key reminders in the context of these legacy LIBOR loans:

***Synthetic LIBOR***: The UK's Financial Conduct Authority announced in April 2023 that it would require that the ICE Benchmark Administration publish a synthetic USD LIBOR rate. The rate is now being published for 1-, 3- and 6-month tenors (overnight and 12-month LIBOR have been fully discontinued) through September 30, 2024, and is calculated using the relevant CME Term SOFR Reference Rate plus the ARCC recommended credit spread adjustments.

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The FCA has made clear that synthetic LIBOR will not be representative of what the LIBOR panel might have determined if the rate had continued to be published via panel submissions — therefore, the publication of synthetic LIBOR does not affect loans that have a non-representativeness trigger for the unavailability of LIBOR.

The largest group of loans that are affected by synthetic LIBOR are those that have a fallback rate but no non-representativeness trigger (mostly loans documented prior to 2020, which is when it became a market norm to include a "non-representative" trigger in LIBOR replacement language in loan agreements).

Those loans will continue to bear interest at the synthetic LIBOR rate until synthetic LIBOR ceases to be published after September 30, 2024, or until they are amended. Of course, the substantive result in this case is no different than would be the case for loans with "hard-wired" LIBOR fallbacks to Term SOFR plus the ARCC spread adjustments.

***LIBOR Act***: The Adjustable Interest Rate (LIBOR) Act and the related Federal Reserve regulations also provide a way forward for "tough" legacy LIBOR loans that do not already adequately address the transition to an alternate rate. A loan is covered by the LIBOR Act regulations if the loan agreement utilizes LIBOR and neither specifies a set fallback rate (customary "base rate" or "prime rate" fallbacks in commercial loans take them outside the scope of the LIBOR Act) nor designates a "determining person" who is authorized to set the rate.

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A loan is also covered if the agreement designates a determining person, but that person had failed to select a rate as of June 30, 2023. The regulations designate SOFR of a comparable tenor plus the ARRC recommended credit spread adjustments as the replacement rate (again resulting in the same substantive result as a loan agreement with hard-wired fallbacks to Term SOFR plus the ARCC-recommended spread adjustment).

For commercial loans, the regulations also allow the "calculating person" (the lender/agent administering the loan) to adopt reasonably necessary administrative changes to the loan agreement in order to implement the new rate.

***LIBOR tenors***: Borrowers who reset LIBOR tenors before the cessation date (or within a few days after cessation when taking into account the two-day lookback to determine the LIBOR screen rate) can carry those rates past cessation to the next reset date — and in fact this is how the transition will work for many loans that are relying on fallback language for the transition. Depending on the date the LIBOR periods commenced, and the LIBOR tenor selected, these loans may continue to bear interest based on LIBOR for up to 6 (or in some cases 12) months after the June 30 cessation.

***Canadian dollar loans***: For reasons similar to those for discontinuance of USD LIBOR, in May of 2022, Refinitiv Benchmark Services (UK) Limited, the administrator of the Canadian Dollar

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Offered Rate (CDOR), announced that it would cease the calculation and publication of all tenors of CDOR after June 28, 2024.

This puts the Canadian rate cessation about a year behind the process for USD LIBOR. Term CORRA is emerging as the front runner to replace CDOR. Similar to SOFR, CORRA has historically only been an overnight rate, so will need to be adapted to be a forward-looking term rate.

## Notes

[1] Loan Syndications and Trading Association: *LIBOR Countdown!* (June 26, 2023); *LIBOR: Rest in Peace(ish)* (June 29, 2023).

## About the author

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