

MEMO# 33448

April 20, 2021

LIBOR Update: New York Governor Signs LIBOR Tough Legacy Legislation

[33448]

April 12, 2021 TO: ICI Members

ICI Global Members SUBJECTS: Compliance

Financial Stability

Operations RE: LIBOR Update: New York Governor Signs LIBOR Tough Legacy Legislation

On April 6, New York Governor Andrew Cuomo signed legislation to provide replacement benchmark rates for “tough legacy” contracts that will still reference US dollar LIBOR when that rate is discontinued in 2023.[\[1\]](#) The legislation, which ICI supported, is anticipated to reduce potential disputes and market disruption. Although the Alternative Reference Rate Committee (ARRC) initiated the state-level legislation in New York, Federal Reserve Chairman Jerome Powell[\[2\]](#) and Treasury Secretary Janet Yellen[\[3\]](#) have supported the additional creation of US federal-level legislation for tough legacy contracts.

The New York legislation joins the amended EU Benchmarks Regulation[\[4\]](#) in finalizing a legislative approach to providing replacement benchmark rates for LIBOR in contracts. The UK Parliament is currently pursuing its own tough legacy legislation to empower the Financial Conduct Authority to calculate a “synthetic” LIBOR rate for some discontinued LIBOR currencies and rates.[\[5\]](#)

Highlights of New York’s tough legacy legislation are discussed below.

What contracts are covered by New York legislation?

The New York legislation applies to certain tough legacy contracts, securities, and instruments governed by New York law. Specifically, the New York legislation applies to contracts that use LIBOR as a benchmark and contain:

- no fallback provisions (*i.e.*, terms in the contract that provide a procedure for setting a benchmark replacement rate if the contract’s primary rate is not available);
- fallback provisions that provide for a benchmark replacement that itself is based on LIBOR; or
- fallback provisions that provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiries for quotes or information concerning interbank lending rates.

How will the New York legislation affect tough legacy contracts?

As of June 30, 2023, the discontinuation date for most tenors of US dollar LIBOR, the legislation will replace the LIBOR rate in tough legacy contracts with a new rate. The new rate will be based on SOFR and include a spread adjustment (“recommended benchmark replacement”). Both the new rate and the spread adjustment will be recommended by Federal Reserve Board, New York Fed, or ARRC, and both will be selected with respect to the type of contract, security, or instrument to which it will apply.

The legislation will also permit conforming changes to be made to affected contracts. Conforming changes are technical, administrative, or operational changes that are reasonably necessary for using the replacement rate. These conforming changes would be recommended by the above entities or be necessary in the reasonable judgment of the person under the contract who is responsible for calculating or determining valuation or payment.

How does the legislative safe harbor work?

The New York legislation also contains a safe harbor to confirm that the selection and use of the recommended benchmark replacement is a reasonable replacement for LIBOR and would not discharge performance under the contract or impair the right of any person to receive a payment under the contract.

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endnotes

[1] See New York State Senate Bill 297B/Assembly Bill 164B, *available at* <https://www.nysenate.gov/legislation/bills/2021/A164?intent=support>.

[2] See Testimony of Chairman Powell at the House Committee on Financial Services Virtual Hearing on Monetary Policy and the State of the Economy (Feb. 24, 2021), *available at* <https://www.youtube.com/watch?t=2793&v=UA2Wwg3GSo0&feature=youtu.be>.

[3] See Testimony of Secretary Yellen at the House Committee on Financial Services Virtual Hearing on Oversight of the Treasury Department’s and Federal Reserve’s Pandemic Response (Mar. 23, 2021), *available at* <https://protect-us.mimecast.com/s/dlY8C0RmO2tm86OuDMcXh>.

[4] See ICI Memorandum No. 33077, *available at* https://www.ici.org/my_ici/memorandum/memo33077.

[5] See ICI Memorandum No. 32855, *available at* https://www.ici.org/my_ici/memorandum/memo32855.

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