The LIBOR Transition
U.S. Legislation

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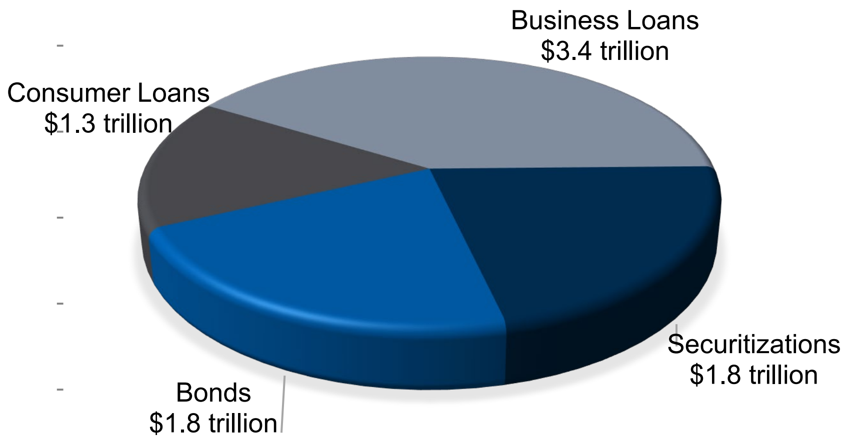
LIBOR Cessation Challenges in the U.S. Dollar Cash Market



LIBOR payments have also been incorporated into a wide array of corporate contracts, including in purchase agreements or sales contracts containing provisions applying LIBOR to adjust pricing for delayed payment or in transfer pricing.

Legacy LIBOR Fallback Provisions

	Typical Fallback	Consent Required
Bonds (FRNs)	• Bank poll → Fixed Rate at last published LIBOR	• Unanimous consent among bondholders
Securitized Products	• Bank poll → Fixed Rate at last published LIBOR • Agency MBS allow issuer selection or fallback to last quoted LIBOR	• Unanimous consent
Mortgages / Consumer Loans	• Lender selection	• Chosen by lender
Business Loans	• Bank poll → Alternative Base Rate – Prime Rate or Fed Funds plus spread • Some bilateral loans have no fallback • Recent syndicated loans allow agent to select a replacement	• **Syndicated Loans:** Unanimous consent of lenders • **Bilateral Loans:** Agreement between borrower and lender
Other Payments	• Other contractual payments (e.g..purchase agreements, sales contracts) typically have no fallback provision	• Counterparties must agree

Source: ARRC March 2018 Report

ARRC's Proposed Legislation – New York State Adoption

- **New York State Law**: New York State recently adopted the ARRC's proposed USD LIBOR legislation, which applies to contracts governed by New York law

- **Purpose:** Reduces the adverse economic outcome of legacy LIBOR fallbacks if certain "trigger events" affecting USD LIBOR occur by applying an ARRC-recommended SOFR rate/spread adjustment to LIBOR contracts ***across all asset classes*** as follows:

    - **Silent contracts** – the legislation applies on a mandatory basis

    - **LIBOR-based fallbacks** – the legislation applies on a mandatory basis (e.g., floating rate bonds & securitizations that fallback to the last LIBOR fix)

    - **Contracts with Discretion** – the legislation applies on a permissive basis (e.g., a calculation agent or administrative agent who is required under the contract to determine what alternative rate to apply may elect to use the ARRC-recommended rate/spread adjustment under the statute and benefit from a safe harbor from legal action)

- **Contracts with fallbacks to rates other than LIBOR** (e.g., prime) remain in place and are not affected by the statute

- **ARRC-Recommended SOFR Rate/Spread:**

    - **Cash markets** – Will be same as SOFR-based rate that applies in the ARRC's recommended USD LIBOR fallbacks (e.g., term SOFR, simple SOFR or SOFR compounding in arrears), and

    - **Derivatives markets** – SOFR based rate used by ISDA in its 2020 IBOR Fallbacks Protocol (SOFR compounding in arrears)

    - **Spread Adjustment** – ISDA's 5-year median spread between relevant LIBOR and term-adjusted SOFR which is published by Bloomberg for relevant LIBOR maturities (spread adjustment was fixed on March 5, 2021 FCA USD LIBOR cessation announcement); 1 year transition period for spread adjustment in consumer products

- **Trigger Events**: Aligns with ISDA and ARRC fallbacks (covers both cessation and UK FCA non-representative determination under the UK's Benchmark Regulations)

ARRC's Proposed Legislation – New York State Adoption (cont'd)

Key Components	Legislation Structure
"Mandatory" v. "Permissive" Application of the Statute	• **Mandatory**: Legacy contract is *silent* as to fallbacks OR falls back to a *Libor-based rate* (such as last-quoted Libor). • **Permissive**: Legacy contract gives a party the right to exercise *discretion or judgment* to select the fallback rate, then that party can decide whether to opt into the statutory safe-harbor.
Degree of Override of Legacy Contract Fallbacks	• **Override**: Legacy contract falls back to *a Libor-based rate* (such as last quoted Libor) or falls back to *polling for Libor* • **No Override**: Legacy contract is *silent* as to fallbacks or gives a party the right to exercise *judgment or discretion* regarding the fallback. *In these instances, there is nothing to override*. **Also no override** for legacy contract that falls back to an express *non-Libor based rate* (such as Prime).
Mutual "Opt-Out"	• Parties are permitted to mutually opt-out of the application of the statute, in writing, at any time *before or after* the occurrence of the Trigger Event.
Trigger Events	• The statute becomes applicable or available (as described in "Mandatory" v. "Permissive" above) upon the occurrence of a statutory trigger event (permanent cessation or a non-representative determination by UK FCA).
"All Products"	• No product is categorically excluded from the statute.
Conforming Changes	• The statute provides safe-harbor protection for parties who add conforming changes to their documents to accommodate administrative/operational adjustments for the statutory endorsed benchmark rate.