
NY takes next step to transition from LIBOR to SOFR - by Keith Brown and Jerry Lagomarsine

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New York recently passed into law the Senate Bill 297B/Assembly Bill 164B (the “NY LIBOR Transition Legislation”) to take the next step in transitioning away from the U.S. Dollar (USD) LIBOR interest rate (LIBOR). The NY LIBOR Transition Legislation helps protect parties who entered into contracts, governed by New York law, that do not contemplate the discontinuance of LIBOR by providing fallback language and an alternative rate based on SOFR.

Background

LIBOR has been in use since the 1980’s and is based on the daily average that banks report that they are willing to pay to borrow from another bank based various terms. LIBOR is being phased out after this year. The one-week and two-month LIBOR will no longer be published after December 31, 2021 and LIBOR will be completely discontinued as of June 23, 2023. In the United States, LIBOR will be replaced by Secured Overnight Financing Rate (SOFR). SOFR is based on the cost of borrowing cash overnight collateralized by U.S. Treasury securities in the repurchase market and began being published in April, 2018 by the Federal Reserve Bank of New York.

The NY LIBOR Transition Legislation affects contracts in New York that use LIBOR and do not adequately provide for a substitute rate as the LIBOR rates are no longer published. In these contracts, once LIBOR, as used in the contract, is discontinued, LIBOR will be replaced as a matter of law with the “Recommended Benchmark Replacement.” The “Recommended Benchmark Replacement” is the replacement rate based on SOFR that is applicable to that type of contract, security or instrument, as determined by the Federal Reserve, the Alternative Reference Rates Committee (ARRC) and/or the Federal Reserve Bank of New York. The NY LIBOR Transition Legislation also provides for a recommended spread adjustment and other conforming changes to implement the rate replacement as determined by Federal Reserve, the ARRC and/or the Federal Reserve Bank of New York. The law does not impact contracts that provide for an alternative rate, but does provide a backstop for contracts that do not.

This law is a major step in transitioning from LIBOR to SOFR and helps alleviate some of the uncertainty as LIBOR is discontinued.

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