

Attachment A: Answers to Frequently Asked Questions on the Transition Away from LIBOR

Effective July 29, 2021

Regulatory Capital Rule FAQs on LIBOR transition

FAQ Topics:

1) Redemption or reissuance of regulatory capital instruments

Question: Would replacing or amending the terms of a capital instrument to transition from the London Interbank Offered Rate (LIBOR) to another reference rate or rate structure be considered an issuance of a new instrument under the capital rule (12 CFR 217) for purposes of the eligibility criteria for regulatory capital?

Answer: The Board of Governors of the Federal Reserve System (Board) does not consider the replacement or amendment of a capital instrument that solely replaces a reference rate linked to LIBOR with another reference rate or rate structure to constitute an issuance of a new capital instrument for purposes of the capital rule. If changes in the terms of the replacement or amended capital instrument solely relate to the adoption of the new reference rate or rate structure, and there are no substantial differences from the original instrument from an economic perspective, the replacement or amended instrument would not be considered a new instrument for purposes of the eligibility criteria for regulatory capital. In this case, for purposes of the capital rule, the replacement or amended instrument would retain the maturity of the original instrument.

A Board-regulated institution that replaces or amends the terms of a capital instrument to transition from LIBOR should support its determination with an appropriate analysis that demonstrates that the replacement or amended instrument is not substantially different from the original instrument from an economic perspective. The Board may request that the Board-regulated institution provide this analysis. Considerations for determining that a replacement or amended capital instrument is not substantially different from the original instrument from an economic perspective could include, but are not limited to, whether the replacement or amended instrument has amended terms beyond those relevant to implementing the new reference rate or rate structure.

2) Regulatory capital instruments with changing distribution rates

Question: For purposes of the eligibility criteria for regulatory capital, would replacing or amending the terms of a capital instrument to transition from the London Interbank Offered Rate (LIBOR) to another reference rate or rate structure be considered creating an incentive to redeem the instrument under the capital rule (12 CFR 217)?

Answer: The Board does not consider the replacement or amendment of a capital instrument that solely replaces a reference rate linked to LIBOR with another reference rate or rate structure to constitute creating an incentive to redeem, as long as the replacement or amended capital instrument is not substantially different from the original instrument from an economic perspective. For example, amending the credit spread solely to reflect the difference in basis between LIBOR and the replacement reference rate and not adjusting for changes in the credit quality of the issuer would not result in creating an incentive to redeem the capital instrument.

A Board-regulated institution that replaces or amends the terms of a capital instrument to transition from LIBOR should support its determination with an appropriate analysis that demonstrates that the replacement or amended instrument is not substantially different from the original instrument from an economic perspective. The Board may request that the Board-regulated institution provide this analysis. Considerations for determining that a replacement or amended capital instrument is not substantially different from the original instrument from an economic perspective could include, but are not limited to, whether the replacement or amended instrument has amended terms beyond those relevant to implementing the new reference rate or rate structure.

Total Loss-Absorbing Capacity (TLAC) FAQs on LIBOR transition

FAQ Topics – U.S. GSIBs, Subpart G of Regulation YY:

3) Exchange or amendment of eligible debt securities

Question: If a global systemically important BHC (GSIB) exchanges or amends an “eligible debt security” (12 CFR 252.61) to transition from the London Interbank Offered Rate (LIBOR) to another reference rate or rate structure, would that be considered an issuance of a new debt security for purposes of the eligibility criteria for the TLAC rule or a continuation of the original “eligible debt security”?

Answer: For purposes of Subpart G of the Board’s Regulation YY, if a GSIB conducts an exchange of eligible debt securities or amends such securities’ terms in order to replace outstanding debt securities that reference LIBOR with debt securities that contain a substantially equivalent reference rate or other rate structure, and no other changes are made to the debt securities, the replacement or amended debt securities are not considered newly issued debt securities. The GSIB may treat the replaced or amended debt securities as if they were the originally outstanding debt securities that referenced LIBOR, rather than treating the debt securities as new debt securities issued on the date of the exchange or amendment. In this case, for purposes of Subpart G of the Board’s Regulation YY, the exchanged or amended debt securities would retain the maturity of the original eligible debt securities.

A GSIB that exchanges an eligible debt security or amends such security’s terms to transition from LIBOR should support its determination with an appropriate analysis that demonstrates that the replacement or amended security is not substantially different from the original security from an economic perspective. The Board may ask the GSIB to provide the analysis upon request. Considerations for determining that a replacement or amended eligible debt security is not substantially different from the original security from an economic perspective could include, but are not limited to, whether the replacement or amended instrument has amended terms beyond those relevant to implementing the new reference rate or rate structure.

4) Exchange offers of eligible debt securities for LIBOR replacement purposes

Question: May a global systemically important BHC (GSIB) conduct an exchange or tender offer for securities issued by the top-tier GSIB directly with third party holders in order to facilitate the GSIB’s transition away from U.S. dollar (USD) LIBOR?

Answer: The Board encourages GSIBs to transition away from USD LIBOR as soon as practicable, and in any event by December 31, 2021. If a GSIB’s exchange offer of securities issued by the top-tier GSIB directly to third party holders would facilitate such

a transition, and is subject to appropriate limitations, such a transaction would not be inconsistent with the purposes of Subpart G of the Board's Regulation YY to enhance GSIB resolvability. Therefore, staff would not recommend that the Board take an enforcement action if a GSIB were to enter into such a transaction where the following conditions are satisfied:

1. The exchange offer will occur prior to the date that the relevant USD LIBOR tenor ceases to be published or becomes nonrepresentative and is for the purpose of exchanging legacy securities to facilitate the transition of the GSIB away from USD LIBOR;
2. Under the exchange offer, the period for which the GSIB will be subject to a legal obligation to settle a contract with tendering holders will be five business days or less;
3. The amount of securities covered by the exchange offer will not exceed the lesser of 5 percent of the GSIB's total risk-weighted assets and 2.5 percent of the GSIB's total leverage exposure; and
4. The GSIB will be well capitalized and in compliance with the Board's liquidity coverage ratio rule at the time the GSIB commences the exchange offer.

FAQ Topics – Covered IHCs, Subpart P of Regulation YY:

1) Exchange offers of eligible covered IHC debt securities for LIBOR replacement purposes

Question: If a covered IHC exchanges or amends an “eligible covered IHC debt security” (12 CFR 252.161) to transition from the London Interbank Offered Rate (LIBOR) to another reference rate or rate structure, would that be considered an issuance of a new debt security for purposes of the eligibility criteria for the TLAC rule or a continuation of the original “eligible covered IHC debt security”?

Answer: For purposes of Subpart P of the Board’s Regulation YY, if a covered IHC conducts an exchange of eligible covered IHC debt securities or amends such securities’ terms in order to replace outstanding debt securities that reference LIBOR with debt securities that contain a substantially equivalent reference rate or other rate structure, and no other changes are made to the debt securities, the replacement or amended debt securities are not considered newly issued debt securities. The Covered IHC may treat the replaced or amended debt securities as if they were the originally outstanding debt securities that referenced LIBOR, rather than treating the debt securities as new debt securities issued on the date of the exchange or amendment. In this case, for purposes of Subpart P of the Board’s Regulation YY, the exchanged or amended debt securities would retain the maturity of the original eligible covered IHC debt securities.

A covered IHC that exchanges an eligible covered IHC debt security or amends such security’s terms to transition from LIBOR should support its determination with an appropriate analysis that demonstrates that the replacement or amended security is not substantially different from the original security from an economic perspective. The Board may ask the covered IHC to provide the analysis upon request. Considerations for determining that a replacement or amended eligible covered IHC debt security is not substantially different from the original security from an economic perspective could include, but are not limited to, whether the replacement or amended instrument has amended terms beyond those relevant to implementing the new reference rate or rate structure.

2) Exchange offers of eligible covered IHC debt securities for LIBOR replacement purposes

Question: May a resolution covered IHC conduct an exchange or tender offer for securities issued by the resolution covered IHC directly with third party holders in order to facilitate the resolution covered IHC’s transition away from U.S. dollar (USD) LIBOR?

Answer: The Board encourages covered IHCs to transition away from USD LIBOR as soon as practicable, and in any event by December 31, 2021. If a covered IHC’s exchange offer of securities issued by the top-tier covered IHC directly to third party holders would facilitate such a transition, and is subject to appropriate limitations, such a

transaction would not be inconsistent with the purposes of Subpart P of the Board's Regulation YY to enhance covered IHC resolvability. Therefore, staff would not recommend that the Board take an enforcement action if a covered IHC were to enter into such a transaction where the following conditions are satisfied:

1. The exchange offer will occur prior to the date that the relevant USD LIBOR tenor ceases to be published or becomes nonrepresentative and is for the purpose of exchanging legacy securities to facilitate the transition of the GSIB away from USD LIBOR;
2. Under the exchange offer, the period for which the covered IHC will be subject to a legal obligation to settle a contract with tendering holders will be five business days or less;
3. The amount of securities covered by the exchange offer will not exceed the lesser of 5 percent of the covered IHC's total risk-weighted assets and 2.5 percent of the covered IHC's total leverage exposure; and
4. The covered IHC will be well capitalized and, if applicable, in compliance with the Board's liquidity coverage ratio rule at the time the covered IHC commences the exchange offer.