

LIBOR Transition Act
Chapter 8, Article 31
§§8-3101 to 8-3104

8-3101

Act, how cited.

Sections 8-3101 to 8-3104 shall be known and may be cited as the LIBOR Transition Act.

Last amended:

~ Laws 2022, LB707, § 1.

Effective Date: April 19, 2022

8-3102

Terms, defined.

For purposes of the LIBOR Transition Act:

(1) Benchmark means an index of interest rates or dividend rates that is used, in whole or in part, as the basis of or as a reference for calculating or determining any valuation, payment, or other measurement under or in respect of a contract, security, or instrument;

(2) Benchmark replacement means a benchmark, or an interest rate or dividend rate, which may or may not be based in whole or in part on a prior setting of LIBOR, to replace LIBOR or any interest rate or dividend rate based on LIBOR, whether on a temporary, permanent, or indefinite basis, under or in respect of a contract, security, or instrument;

(3) Benchmark replacement conforming changes means, with respect to any type of contract, security, or instrument, any technical, administrative, or operational changes, alterations, or modifications that are associated with and reasonably necessary to the use, adoption, calculation, or implementation of a recommended benchmark replacement and that:

(a) Have been selected or recommended by a relevant recommending body; and

(b) If, in the reasonable judgment of the calculating person, the benchmark replacement conforming changes selected or recommended pursuant to subdivision (3)(a) of this section do not apply to such contract, security, or instrument or are insufficient to permit administration and calculation of the recommended benchmark replacement, then benchmark replacement conforming changes shall include such other changes, alterations, or modifications that, in the reasonable judgment of the calculating person:

(i) Are necessary to permit administration and calculation of the recommended benchmark replacement under or in respect of such contract, security, or instrument in a manner consistent with market practice for substantially similar contracts, securities, or instruments and, to the extent

practicable, the manner in which such contract, security, or instrument was administered immediately prior to the LIBOR replacement date; and

(ii) Would not result in a disposition of such contract, security, or instrument for United States federal income tax purposes;

(4) Calculating person means, with respect to any contract, security, or instrument, any person, which may be the determining person, responsible for calculating or determining any valuation, payment, or other measurement based on a benchmark;

(5) Contract, security, or instrument includes, without limitation, any contract, agreement, mortgage, deed of trust, lease, security, whether representing debt or equity and including any interest in a corporation, a partnership, or a limited liability company, instrument, or other obligation;

(6) Determining person means, with respect to any contract, security, or instrument, in the following order of priority:

(a) Any person specified as a determining person; or

(b) Any person with the authority, right, or obligation to:

(i) Determine the benchmark replacement that will take effect on the LIBOR replacement date;

(ii) Calculate or determine a valuation, payment, or other measurement based on a benchmark; or

(iii) Notify other persons of the occurrence of a LIBOR discontinuance event, a LIBOR replacement date, or a benchmark replacement;

(7) Fallback provisions means terms in a contract, security, or instrument that set forth a methodology or procedure for determining a benchmark replacement, including any terms relating to the date on which the benchmark replacement becomes effective, without regard to whether a benchmark replacement can be determined in accordance with such methodology or procedure;

(8) LIBOR means, for purposes of the application of the LIBOR Transition Act to any particular contract, security, or instrument, United States dollar LIBOR, formerly known as the London interbank offered rate, as administered by ICE Benchmark Administration Limited, or any predecessor or successor thereof, or any tenor thereof, as applicable, that is used in making any calculation or determination thereunder;

(9)(a) LIBOR discontinuance event means the earliest to occur of any of the following:

(i) A public statement or publication of information by or on behalf of the administrator of LIBOR announcing that such administrator has ceased or will cease to provide LIBOR,

permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR;

(ii) A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the United States Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction over the administrator for LIBOR, or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR, which states that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR; or

(iii) A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

(b) For purposes of this subdivision (9), a public statement or publication of information that affects one or more tenors of LIBOR shall not constitute a LIBOR discontinuance event with respect to any contract, security, or instrument that (i) provides for only one tenor of LIBOR, if such contract, security, or instrument requires interpolation and such tenor can be interpolated from LIBOR tenors that are not so affected, or (ii) permits a party to choose from more than one tenor of LIBOR and any of such tenors (A) is not so affected or (B) if such contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected;

(10)(a) LIBOR replacement date means:

(i) In the case of a LIBOR discontinuance event described in subdivision (9)(a)(i) or (ii) of this section, the later of (A) the date of the public statement or publication of information referenced therein and (B) the date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR; and

(ii) In the case of a LIBOR discontinuance event described in subdivision (9)(a)(iii) of this section, the date of the public statement or publication of information referenced therein.

(b) For purposes of this subdivision (10), a date that affects one or more tenors of LIBOR shall not constitute a LIBOR replacement date with respect to any contract, security, or instrument that (i) provides for only one tenor of LIBOR, if such contract, security, or instrument requires interpolation and such tenor can be interpolated from LIBOR tenors that are not so affected, or (ii) permits a party to choose from more than one tenor of LIBOR and any of such tenors (A) is not so affected or (B) if such contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected;

(11) Recommended benchmark replacement means, with respect to any particular type of contract, security, or instrument, a benchmark replacement based on SOFR, which shall include any recommended spread adjustment and any benchmark replacement conforming changes, that has been selected or recommended by a relevant recommending body with respect to such type of contract, security, or instrument;

(12) Recommended spread adjustment means a spread adjustment, or method for calculating or determining such spread adjustment, which may be a positive or negative value or zero, that has been selected or recommended by a relevant recommending body for a recommended benchmark replacement for a particular type of contract, security, or instrument and for a particular term to account for the effects of the transition or change from LIBOR to a recommended benchmark replacement;

(13) Relevant recommending body means the Federal Reserve Board, the Federal Reserve Bank of New York, or the Alternative Reference Rates Committee, or any successor to any of them; and

(14) SOFR means, with respect to any day, the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark or a successor administrator, on the Federal Reserve Bank of New York's website.

Last amended:

~ Laws 2022, LB707, § 2.

Effective Date: April 19, 2022

8-3103

Contract, security, or instrument; recommended benchmark replacement; how determined; act; effect; applicability.

(1) On the LIBOR replacement date, the recommended benchmark replacement shall, by operation of law, be the benchmark replacement for any contract, security, or instrument that uses LIBOR as a benchmark and:

(a) Contains no fallback provisions; or

(b) Contains fallback provisions that result in a benchmark replacement, other than a recommended benchmark replacement, that is based in any way on any LIBOR value.

(2) Following the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument that provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiries for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR shall be disregarded as if not included in such contract, security, or instrument and shall be deemed null and void and without any force or effect.

(3)(a) This subsection shall apply to any contract, security, or instrument that uses LIBOR as a benchmark and contains fallback provisions that permit or require the selection of a benchmark replacement that is:

(i) Based in any way on any LIBOR value; or

(ii) The substantive equivalent of subdivision (1)(a), (b), or (c) of section 8-3104.

(b) A determining person shall have the authority under the LIBOR Transition Act, but shall not be required, to select on or after the occurrence of a LIBOR discontinuance event the recommended benchmark replacement as the benchmark replacement. Such selection of the recommended benchmark replacement shall be:

(i) Irrevocable;

(ii) Made by the earlier of either the LIBOR replacement date or the latest date for selecting a benchmark replacement according to such contract, security, or instrument; and

(iii) Used in any determinations of the benchmark under or with respect to such contract, security, or instrument occurring on or after the LIBOR replacement date.

(4) If a recommended benchmark replacement becomes the benchmark replacement for any contract, security, or instrument pursuant to subsection (1) or (3) of this section, then all benchmark replacement conforming changes that are applicable to such recommended benchmark replacement shall become an integral part of such contract, security, or instrument by operation of law.

(5) The LIBOR Transition Act shall not alter or impair:

(a) Any written agreement by all requisite parties that, retrospectively or prospectively, provides that the contract, security, or instrument shall not be subject to the LIBOR Transition Act without necessarily referring specifically to the act. For purposes of this subdivision, requisite parties means all parties required to amend the terms and provisions of a contract, security, or instrument that would otherwise be altered or affected by the act;

(b) Any contract, security, or instrument that contains fallback provisions that would result in a benchmark replacement that is not based on LIBOR, including, but not limited to, the prime rate or the federal funds rate, except that such contract, security, or instrument shall be subject to subsection (2) of this section;

(c) Any contract, security, or instrument subject to subsection (3) of this section as to which a determining person does not elect to use a recommended benchmark replacement pursuant to subsection (3) of this section or as to which a determining person elects to use a recommended benchmark replacement prior to the occurrence of a LIBOR discontinuance event, except that such contract, security, or instrument shall be subject to subsection (2) of this section; or

(d) The application to a recommended benchmark replacement of any cap, floor, modifier, or spread adjustment to which LIBOR had been subject pursuant to the terms of a contract, security, or instrument.

(6) Notwithstanding the Uniform Commercial Code or any other law of this state, the LIBOR Transition Act shall apply to all contracts, securities, and instruments, including contracts, with respect to commercial transactions and shall not be deemed to be displaced by any other law of this state.

Last amended:

~ Laws 2022, LB707, § 3.

Effective Date: April 19, 2022

8-3104

Recommended benchmark replacement; selection or use; effects; treatment; not subject to liability or certain claims.

(1) The selection or use of a recommended benchmark replacement as a benchmark replacement under or in respect of a contract, security, or instrument by operation of section 8-3103 shall constitute:

(a) A commercially reasonable replacement for and a commercially substantial equivalent to LIBOR;

(b) A reasonable, comparable, or analogous term for LIBOR under or in respect of such contract, security, or instrument;

(c) A replacement that is based on a methodology or information that is similar or comparable to LIBOR; and

(d) Substantial performance by any person of any right or obligation relating to or based on LIBOR under or in respect of a contract, security, or instrument.

(2) Any LIBOR discontinuance event or LIBOR replacement date, selection or use of a recommended benchmark replacement as a benchmark replacement, or determination, implementation, or performance of benchmark replacement conforming changes that occurs by operation of section 8-3103 shall not:

(a) Be deemed to impair or affect the right of any person to receive a payment, or affect the amount or timing of such payment, under any contract, security, or instrument; or

(b) Have the effect of (i) discharging or excusing performance under any contract, security, or instrument for any reason, claim, or defense, including, but not limited to, any force majeure or other provision in any contract, security, or instrument, (ii) giving any person the right to unilaterally terminate or suspend performance under any contract, security, or instrument, (iii) constituting a breach of a contract, security, or instrument, or (iv) voiding or nullifying any contract, security, or instrument.

(3) No person shall have any liability for damages to any person or be subject to any claim or request for equitable relief arising out of or related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of benchmark replacement conforming changes, in each case, by operation of section 8-3103, and such selection or use of the recommended benchmark replacement or such determination, implementation, or performance of benchmark replacement conforming changes shall not give rise to any claim or cause of action by any person in law or in equity.

(4) The selection or use of a recommended benchmark replacement or the determination, implementation, or performance of benchmark replacement conforming changes, by operation of section 8-3103, shall be deemed to:

(a) Not be an amendment or modification of any contract, security, or instrument; and

(b) Not prejudice, impair, or affect any person's rights, interests, or obligations under or in respect of any contract, security, or instrument.

(5) Except as provided in either subsection (1) or (3) of section 8-3103, the LIBOR Transition Act shall not be interpreted as creating any negative inference or negative presumption regarding the validity or enforceability of:

(a) Any benchmark replacement that is not a recommended benchmark replacement;

(b) Any spread adjustment, or method for calculating or determining a spread adjustment, that is not a recommended spread adjustment; or

(c) Any changes, alterations, or modifications to or in respect of a contract, security, or instrument that are not benchmark replacement conforming changes.

Last amended:

~ Laws 2022, LB707, § 4.

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