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[Regulatory Comments Stress Safe Harbors in Libor Transition.]

The establishment of safe harbors is one of the key issues raised by public finance industry groups in their comments to the U.S. Treasury, Internal Revenue Service and the Governmental Accounting Standards Board on their proposed guidance for making the transition away from Libor.

In formal comments filed with the federal government and separately to GASB ahead of filing deadlines this week, municipal finance groups have given the regulators generally high marks while noting the transition to other reference rates is not of their own choosing.

Libor is being phased out at the recommendation of the Alternative Reference Rates Committee created by the U.S. Federal Reserve Board and the Federal Reserve Bank of New York.

National Association of Bond Lawyers President Rich Moore characterized his organization's 22-page submission to Treasury and the IRS as an effort to ensure that the tax-exempt bond market receives consideration.

"This transition from Libor is big in the general tax market," Moore said. "All sorts of folks are going to be commenting on this proposed regulation and NABL wanted to focus on the areas that are unique to tax-exempt bonds because if we don't comment on those, who will?"

NABL, for instance, suggested tweaks to the arm's-length safe harbor to ensure it works for the issuer and more clarity that any one-time payment that goes to or from the issuer not be treated as proceeds of the bonds.

NABL also wants clarity that if the new index uses a multiplier that would otherwise cause that bond to be a contingent debt instrument, that it not be treated as a contingent payment debt instrument.

"We have some background in the appendixes on all these things as to why we care," said Moore, noting that the committee of NABL lawyers who composed the document was chaired by Matthias Edrich.

NABL's comments are longer and more detailed than they might have been because of the recent departure from Treasury of John Cross, the department's most experienced public finance tax expert.

The Government Finance Officers Association, which also filed comments with Treasury and the IRS, requested "an additional safe harbor to the substantial equivalence test."

"This safe harbor may further assist the GASB in their proposed exposure draft addressing replacement rates on current effective hedges," said GFOA.

The new alternative reference rates cited by Treasury and the IRS include the Secured Overnight Financing Rate (SOFR) published by the Federal Reserve Bank of New York and the Federal Funds

Rate.

Both the Treasury and GASB proposals include all other IBORs offered in other countries, including Switzerland, Japan and the European Union.

“We are pleased to see the IRS and Treasury’s preemptive approach in the proposed regulations, especially as they address issuer’s legacy contracts,” GFOA said in its comments. “We are especially pleased to assist in the efforts of the industry, official sector and regulatory agencies moving forward to build a framework that allows for a comprehensive approach for issuers and their counterparties in the context of a cessation of Libor.”

The GASB proposal, Replacement of Interbank Offered Rates, offers new accounting and financial reporting guidance to assist state and local governments that use GAAP accounting in the transition away from Libor for reporting periods beginning after Dec. 15, 2020.

GASB received more than a dozen comments from groups such as the National Federation of Municipal Analysts and the National Association of State Auditors, Comptrollers and Treasurers.

NFMA’s letter noted, “a few of the organization’s members questioned whether the GASB should consider allowing other rates/indices as appropriate benchmark rates and broadening the exception to account for the potential discontinuation of other rates or indices.”

GASB’s proposal clarifies the hedge accounting termination provisions when an IBOR is replaced as the reference rate of a hedged item and that the uncertainty associated with reference rate reform does not, by itself, affect the probability that an expected transaction will occur.

GASB would allow an amendment to replace the reference rate that would not constitute a termination within certain guardrails that prevent changing the terms of the swap. It also clarifies the definition of reference rate, and provides an exception to the lease modifications guidance in Statement 87 for certain IBOR-related lease contract amendments.

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