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CFPB Issues Proposals and Updated Guidance Ahead of LIBOR Discontinuation: McGuireWoods

On Thursday, June 4, the Consumer Financial Protection Bureau ("CFPB") issued guidance to address issues arising out of the pending discontinuation of LIBOR and the resulting need for creditors to transition to other benchmarks. As the CFPB has noted, at this time, the transition is expected after 2021, with the anticipated shift to the Secured Overnight Financing Rate ("SOFR") index supported by the Alternative Reference Rates Committee (ARRC), a public-private working group organized to address the transition. Ahead of an inevitable, challenging transition, the CFPB issued an extensive rulemaking proposal with request for public comment, a revised consumer handbook, and updated compliance guidance.

Notably, the CFPB has proposed several amendments to Regulation Z, which implements the Truth in Lending Act, to facilitate the LIBOR transition and "address the sunset of LIBOR." First, the CFPB proposed changes to open-end and closed-end credit provisions "to provide examples of replacement indices for LIBOR indices that meet certain Regulation Z standards." In relation to the open-end provisions, the CFPB proposed several technical edits to certain comments and to replace LIBOR references with references to SOFR.

Further, the CFPB proposes the permissible transition of certain existing accounts by creditors to a replacement index, if certain conditions are satisfied, and also addresses change-in-terms notice provisions for home equity lines of credit (HELOCs) and credit card accounts. Lastly, the CFPB proposed to add an exception from the rate reevaluation provisions applicable to credit card accounts.

While these proposals concern potential complications that may arise for creditors during the transition, the CFPB is also proactively identifying and addressing areas of potential confusion for consumers. The CFPB proposes that the final rule take effect on March 15, 2021, except for the updated change-in-terms requirements for HELOC and credit card accounts, which would apply as of October 1, 2021.

The CFPB has also examined the impact of the LIBOR transition on its Consumer Handbook on Adjustable Rate Mortgages ("CHARM booklet"). The revised booklet is intended to provide information to consumers and must be provided by mortgage lenders when a consumer applies for an adjustable rate mortgage ("ARM"). According to the CFPB, the CHARM booklet was revised to, among other things, "remove the historical comparison example that used LIBOR as an index for comparison." The CFPB noted the revised booklet also contains a useful comparison table, consists of fewer pages, and utilizes enhanced design elements while removing references to the LIBOR benchmark index. Creditors may, at their option, "immediately begin using the revised CHARM booklet, or a suitable substitute" in their efforts to comply with Regulation Z.

As an added measure, the CFPB issued updated guidance in the form of LIBOR Transition FAQs to address consumer financial products and services potentially affected by the transition. The FAQs discuss ARM products, HELOCs , and specific regulatory or statutory requirements creditors need to consider as they prepare to transition impacted consumers. To promote compliance during this evolution in the area of variable-rate products, the CFPB's guidance aims to address regulatory requirements for both existing accounts and new originations as the necessary steps are taken to discontinue use of LIBOR.

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