Background on LIBOR and SOFR

By Emily Swenson Brock

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The London Interbank Offered Rate (LIBOR) is a global benchmark interest rate that is calculated daily. With $200 trillion in U.S. dollar exposures linked to it, LIBOR is the most widely used benchmark and has been called "the world's most important number." Financial products based on LIBOR include loans, corporate bonds, interest rate swaps, mortgages, student loans, and deposits. They also include municipal bonds and loans.

While ubiquitous, LIBOR became less suitable as a benchmark because it is meant to represent the cost of short-term unsecured borrowing by banks, and banks have substantially reduced their use of this type of borrowing. The LIBOR panel banks typically must submit rates based on their judgment rather than actual transactions, and many are understandably reluctant to continue doing so. Regulators and market participants are concerned that this "most important number" is no longer robust. The transition away from LIBOR became urgent in July 2017 when Andrew Bailey, head of the United Kingdom Financial Conduct Authority (FCA) and regulator of LIBOR, announced that they would not require panel banks to submit quotes underlying LIBOR after 2021. In light of these statements, the future existence of LIBOR is uncertain.

In 2014, the Federal Reserve formed the Alternative Reference Rates Committee (ARRC), a group that includes private-sector market participants to select a rate to replace USD LIBOR and guide the transition. After much analysis of the potential alternatives, the ARRC announced in June 2017 that it had selected a new rate, the Secured Overnight Financing Rate (SOFR), as the recommended replacement for USD LIBOR. The Federal Reserve began publishing SOFR in April 2018. The ARRC selected SOFR because:

- SOFR is fully based on actual transactions, and so does not rely on judgment.
- SOFR references multiple segments of the U.S. Treasury repurchase agreement market, the largest rates market in the world.
- SOFR's underlying market is resilient and robust.
- SOFR is a true "risk-free" rate suitable as a reflection of interest rates overall.
- SOFR is produced by the public sector using a transparent methodology.
- SOFR correlates well with other overnight money market rates and with the cost of borrowing for nonfinancial corporations.

To guide the transition, the ARRC was reconstituted in April 2018 with broad representation from official government entities, banks, asset managers, insurers, consumer groups, and industry trade associations. It is now tasked with:

- Developing options for implementing SOFR across loans, bonds, and securities that reference the USD LIBOR (cash products);
- Transitioning derivatives transactions to SOFR;
- Minimizing potential disruptions associated with either voluntary transition to SOFR or to an end of LIBOR; and
- Communicating the rationale behind the change to SOFR and the status of implementation.

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TRANSITION TO SOFR FOR MUNICIPAL ISSUERS

Taking inventories of existing products and processes that use LIBOR should be a first step for any municipal issuer. Some common uses of LIBOR among state and local government generally include:

- Issuance of floating rate notes and loans where the interest rate is reset periodically based on LIBOR such as private placements and bank loans.
- Use of derivatives linked to LIBOR:
  - Use of synthetic fixed-rate structures to gain exposure to a fixed rate when issuing variable rate bonds — for example, interest rate swaps in which an issuer agrees to receive a LIBOR-based floating interest rate in exchange for paying a fixed interest rate. To the extent that the two floating rates offset each other, the issuer's net interest rate exposure is limited to the fixed swap rate.
  - Similarly, use of synthetic variable rate structures to gain exposure to a variable rate when issuing fixed rate municipal bonds. Examples are interest rate swaps where the payments are reversed, compared to the example above. To the extent that the fixed rates offset each other, the issuer's net interest rate exposure is limited to the floating swap rate.
  - Use of interest rate swaps in an effort to assume exposure to changes in tax rates, where the issuer pays the counterparty a floating rate based on the Securities Industry and Financial Markets Association Index, which tracks tax-exempt seven-day interest rates and receives a percentage of LIBOR for a set period of time. These transactions provide an opportunity for positive carry, given differences between tax-exempt and taxable rates.
- Holding of LIBOR-based floating rate notes issued by corporations or sovereigns in the state and local government's asset portfolios.

Because many of these contracts referencing LIBOR do not adequately plan for the risk that LIBOR will be discontinued, such an event could have serious consequences for a wide range of market participants and investors. Strategies for how to handle LIBOR cessation in legacy contracts have not yet been worked out, and municipal issuers together with their counsel and advisors should work with ARRC to seek ways of addressing these issues.

Developing mechanisms through which market participants can transition remaining legacy LIBOR-based products to SOFR, and launching new contracts referencing SOFR or other rates, should be two core programs for municipal issuers in the coming years. Addressing potential problems like tax and accounting issues, as well as continuing education about the available resources and the transition timeline, will also help.

LEGACY CONTRACTS

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tions need to be managed through "fallback" provisions set forth in contracts describing what happens if LIBOR is no longer produced. Open questions include who can legally change contract language to include fallback provisions (i.e., unanimous consent versus calculation agent), what the exact triggers to move to an alternative rate would be, and whether a spread should be included (or adjusted).

NEW CONTRACTS

Issuers should also start thinking about and planning for new language and terms that would reference SOFR or other rates rather than LIBOR. As soon as they are comfortable with the new language, they should start using it in new contracts.

TAX AND ACCOUNTING ISSUES

A number of potential tax and accounting issues will need to be addressed, including whether a move from LIBOR would cause a bond to lose its tax-exempt status. The ARRC is working on these questions.

Importantly, in early October 2019, the U.S. Treasury Department moved to smooth the transition away from LIBOR by proposing a rule allowing market participants to change the reference rate on any contract without tax consequences. GFOA looks forward to commenting on the proposed regulations. The Treasury Department's attention to this matter has been much anticipated by issuers and other market participants as they prepare for the transition away from LIBOR. We are especially glad to see that the Internal Revenue Service is providing clarity around the tax issues relating to converting outstanding trades such as interest rate swap contracts in order to alleviate any costly and unproductive disruption for issuers.

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EDUCATION AND RESOURCES

All market participants should prepare themselves for a world with SOFR, and potentially one without LIBOR. The ARRC maintains a website, which is accessible to all, where it will release guidance and steps on transitioning as well as updates on market progress during this transition.

As an appointee to the Alternative Reference Rates Committee, GFOA will continue providing content to help educate the issuer community as the transition approaches.

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