CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1026

[Docket No. CFPB–2023–0030]

RIN 3170–AB19

Facilitating the LIBOR Transition Consistent With the LIBOR Act (Regulation Z)

AGENCY: Consumer Financial Protection Bureau.

ACTION: Interim final rule with request for public comment.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is issuing an interim final rule amending Regulation Z, which implements the Truth in Lending Act (TILA), to reflect the enactment of the Adjustable Interest Rate (LIBOR) Act (the LIBOR Act or Act) and its implementing regulation promulgated by the Board of Governors of the Federal Reserve System (Board). This interim final rule further addresses the planned cessation of most U.S. Dollar (USD) LIBOR tenors after June 30, 2023, by incorporating the Board-selected benchmark replacement for consumer loans into Regulation Z. This interim final rule conforms the terminology from the LIBOR Act and the Board's implementing regulation into relevant Regulation Z open-end and closed-end credit provisions and also addresses treatment of the 12-month USD LIBOR index and its replacement index, including permitting creditors to use alternative language in change-in-terms notice content requirements for situations where the 12-month tenor of the LIBOR index is being replaced consistent with the LIBOR Act. The CFPB requests public comment on this interim final rule.

DATES: This interim final rule is effective May 15, 2023. Comments must be received on or before June 12, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2023–0030 or RIN 3170–AB19, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2023-LIBOR-IFR@cfpb.gov.* Include Docket No. CFPB–2023–0030 or RIN 3170–AB19 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—LIBOR, c/o Legal Division Docket Manager, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically.

Instructions: The CFPB encourages the early submission of comments. All submissions must include the document title and docket number. Please note the number of the topic on which you are commenting at the top of each response (you do not need to address all topics). In general, all comments received will be posted without change to *https://www.regulations.gov.*

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Krista Ayoub, Lanique Eubanks, Angela Fox, or Kristen Phinnessee, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Interim Final Rule

The CFPB is issuing this interim final rule amending Regulation Z, which implements TILA, for both open-end and closed-end credit to make changes consistent with the LIBOR Act and its implementing regulation issued by the Board and further address the planned cessation of LIBOR.[1] These changes amend and update the CFPB's Facilitating the LIBOR Transition (Regulation Z) final rule published in the **Federal Register** on December 8, 2021 (2021 LIBOR Transition Final Rule).[2] In general, the interim final rule makes several conforming terminology changes to align with the LIBOR Act and the Board's implementing regulation. In the 2021 LIBOR Transition Final Rule, the CFPB generally had provided examples of certain indices, including spread-adjusted Secured Overnight Financing Rate (SOFR)-based indices, that may meet the applicable Regulation Z standards (referred to hereafter as SOFR-based replacement indices) for the 1-month, 3-month, and 6-month tenors of USD LIBOR, but it reserved judgment about whether to include references to a 1-year (or 12-month) USD LIBOR index and its SOFR-based replacement index. The CFPB is now also conforming Regulation Z with the LIBOR Act and the Board's implementing regulation by adding such references with respect to the SOFR-based replacement for the 12-month tenor of LIBOR. This interim final rule does not in any way alter or modify the Bureau's determination in the 2021 LIBOR Transition Final Rule in relation to the prime rate as a replacement index. As discussed in part VI, this interim final rule will take effect on May 15, 2023. The CFPB solicits comment on this interim final rule.

A. Open-End Credit

The CFPB is amending several open-end credit provisions in Regulation Z. First, the CFPB is changing the terminology used in the 2021 LIBOR Transition Final Rule to make it consistent with terminology in the LIBOR Act and the Board's implementing regulation. Specifically, as discussed in further detail below, the CFPB is replacing all references to the ''index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products'' with ''the Board-selected benchmark replacement for consumer loans'' and adding a new definition for that term in § 1026.2(a)(28). For this new definition and throughout this interim final rule, the CFPB is using the term 12-month tenor instead of the 1-year tenor with respect to the USD LIBOR index to align with the terminology used in the LIBOR Act and the Board's implementing regulation. These changes are set forth in § 1026.40(f)(3)(ii) and related comments for home equity lines of credit (HELOCs) and in § 1026.55(b)(7) and related comments for credit card accounts.

Second, the CFPB is revising the Official Interpretations to incorporate the Board-selected benchmark replacement for consumer loans to replace the 12-month LIBOR index, as prescribed by the LIBOR Act and the Board's implementing regulation, as an index that has historical fluctuations

[1] When amending the Official Interpretations, the Office of the Federal Register requires reprinting of certain sections being amended in their entirety rather than providing more targeted amendatory instructions. The sections of regulatory text and the Official Interpretations included in this document show the language of those sections. In addition, the Bureau is releasing an unofficial, informal redline to assist industry and other stakeholders in reviewing the changes made in this interim final rule to the regulatory text and the Official Interpretations of Regulation Z. This redline can be found on the Bureau's website, at *https://www.consumerfinance.gov/compliance/compliance-resources/other-applicable-requirements/libor-index-transition/.* If any conflicts exist between the redline and the text of Regulation Z, its Official Interpretations, or this interim final rule, the documents published in the **Federal Register** are the controlling documents.

[2] 86 FR 69716 (Dec. 8, 2021).

that are substantially similar to those of the 12-month USD LIBOR index it is intended to replace. Consistent with the LIBOR Act and the Board's implementing regulation, the Bureau's prior determination of the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee (ARRC) is obsolete given that ''the Board-selected benchmark replacement for consumer loans'' to replace 1-month, 3-month, and 6-month USD LIBOR indices is the same as the corresponding spread-adjusted index based on SOFR recommended by the ARRC for consumer products. These changes are set forth in § 1026.40(f)(3)(ii) and related comments for HELOCs and in § 1026.55(b)(7) and related comments for credit card accounts.

Third, the CFPB is adding the Board-selected benchmark replacement for consumer loans that would replace the 12-month USD LIBOR index to the list of indices where a creditor is allowed to use an alternative method to disclose information about the periodic rate and annual percentage rate (APR) in change-in-terms notices for HELOCs and credit card accounts as a result of the replacement of the LIBOR index in certain circumstances. These changes are set forth in comment 9(c)(1)–4 for HELOCs and in comment 9(c)(2)(iv)–2.ii for credit card accounts.

Fourth, the CFPB is adding the Board-selected benchmark replacement for consumer loans that would replace the 12-month USD LIBOR index to the list of indices where a card issuer is allowed to use an alternative method for determining whether the card issuer can terminate its obligation under the credit card account rate reevaluation requirements where the rate applicable immediately prior to a rate increase was a variable rate calculated using a LIBOR index. The Bureau also deleted its prior determination in the Official Interpretations given that ''the Board-selected benchmark replacement for consumer loans'' to replace 1-month, 3-month, and 6-month USD LIBOR indices is the same as the corresponding spread-adjusted index based on SOFR recommended by the ARRC for consumer products. These changes are set forth in § 1026.59(f)(3) and comment 59(f)–4.

B. Closed-End Credit

The CFPB is also amending the closed-end credit provisions in Regulation Z. First, the CFPB is changing the terminology used in the CFPB's 2021 LIBOR Transition Final Rule to make it consistent with terminology in the LIBOR Act. Specifically, as discussed in further detail below, the CFPB is replacing the reference to the ''index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products'' with a reference to ''the Board-selected benchmark replacement for consumer loans.'' Second, the CFPB is revising an illustrative example in the Official Interpretations to incorporate the Board-selected benchmark replacement for consumer loans to replace the 12-month LIBOR index, as prescribed by the LIBOR Act, as an index that is comparable to the 12-month USD LIBOR index it is intended to replace for purposes of the closed-end refinancing provisions. These changes are set forth in comment 20(a)(3)–ii.B.

II. Background

A. Introduction—Consumer Products Using LIBOR

Introduced in the 1980s, LIBOR (originally an acronym for London Interbank Offered Rate) was intended to measure the average rate at which a bank could obtain unsecured funding in the London interbank market for a given period, in a given currency. In the United States, financial institutions have used LIBOR as a common benchmark rate for a variety of adjustable-rate consumer financial products, including mortgages, credit cards, HELOCs, reverse mortgages, and student loans. Typically, the consumer pays an interest rate that is calculated as the sum of a benchmark index and a margin. For example, a consumer may pay an interest rate equal to the 12-month USD LIBOR plus two percentage points.

LIBOR is set to expire on June 30, 2023. Financial institutions have been developing plans and procedures to transition from the use of LIBOR indices to replacement indices for products that are being newly issued and existing accounts that were originally benchmarked to a LIBOR index. In some markets, such as for HELOCs and credit cards, the vast majority of newly originated lines of credit are already based on indices other than a LIBOR index.

B. CFPB's 2021 LIBOR Transition Final Rule

On December 8, 2021, the CFPB issued the 2021 LIBOR Transition Final Rule generally to address the expected discontinuance of most U.S. Dollar (USD) tenors of LIBOR in June 2023.[3] The 2021 LIBOR Transition Final Rule, among other things, amended open-end and closed-end provisions of Regulation Z to provide examples of replacement indices to USD LIBOR tenors that meet certain Regulation Z standards.

For each of these open-end and closed-end provisions, while the CFPB generally provided examples of certain indices, including SOFR-based replacement indices for 1-month, 3-month, and 6-month tenors of USD LIBOR, the CFPB reserved judgment about whether to include a SOFR-based replacement index for the 1-year (now being referred to as 12-month in this interim final rule) USD LIBOR index until it obtained additional information. The CFPB stated that once it knew which SOFR-based index the ARRC would recommend to replace the 12-month USD LIBOR index for consumer products, the Bureau would consider determining whether the replacement index and replacement margin met the appropriate standards in Regulation Z and would then consider whether to codify that determination in a supplemental final rule, or otherwise announce that determination. Most provisions of the 2021 LIBOR Transition Final Rule were effective on April 1, 2022.[4]

C. The LIBOR Act

On March 15, 2022, Congress enacted the LIBOR Act as part of the Consolidated Appropriations Act, 2022.[5] Among other things, the LIBOR Act provides that the Board may identify a replacement index based on SOFR published by the Federal Reserve Bank of New York (or a successor administrator), including tenor spread adjustments, to replace the 1-month, 3-month, 6-month, and 12-month tenors of USD LIBOR for any LIBOR contracts that do not otherwise specify a replacement rate fallback provision or method for selecting a fallback rate.[6] The LIBOR Act (and the Board's subsequent final rule, discussed below) identify these replacement indices as the ''Board-selected benchmark replacement'' index.[7]

The LIBOR Act provides certain safe harbors for use of a Board-selected benchmark replacement for consumer loans, including stating that the Board-

[3] *Id.*

[4] October 1, 2023, is the effective date for an amendment that removes two ''Legacy'' post-consummation change-in-terms forms H–4(D)(2) and H–4(D)(4) in appendix H of part 1026 that still reference LIBOR, and prevents these two forms from being used to demonstrate compliance with part 1026.20.

[5] Public Law 117–103, div. U, 136 Stat. 825 (2022).

[6] LIBOR Act section 104, 136 Stat. 828.

[7] LIBOR Act section 103(6), 136 Stat. 826. *See also* 12 CFR 253.2 and 253.4.

selected benchmark replacements constitute replacement indices that have historical fluctuations that are substantially similar to those of LIBOR for purposes of TILA [8] and regulations promulgated under that statute.[9]

D. Board's 2022 LIBOR Act Final Rule

The Board issued a final rule to implement the LIBOR Act on December 16, 2022, effective February 27, 2023 (Board's 2022 LIBOR Act Final Rule).[10] Among other things, the Board's final rule established benchmark replacements for contracts governed by U.S. law that reference certain tenors of USD LIBOR, including those of 1-month, 3-month, 6-month,[11] and 12-month tenors, that do not have terms that provide for the use of a clearly defined and practicable replacement benchmark rate following the cessation of LIBOR.[12] The LIBOR Act, and the Board's implementing regulation, provide for certain adjustments in general for LIBOR contracts and more specifically for LIBOR contracts that are consumer loans. Consistent with LIBOR Act, the final rule identified each of those indices as a ''Board-selected benchmark replacement'' for consumer loans, thereby meeting the safe harbor criteria in the LIBOR Act.

The final rule provided that the Board-selected benchmark replacements for LIBOR contracts that are consumer loans using 1-month, 3-month, 6-month, or 12-month tenors of USD LIBOR during the one-year period beginning on the LIBOR replacement date shall be the corresponding 1-month, 3-month, 6-month, or 12-month CME Term SOFR plus an amount that transitions linearly for each business day during that period from the difference between the relevant CME Term SOFR and the relevant LIBOR tenor determined as of the day immediately before the LIBOR replacement date to the applicable tenor spread adjustment identified in the final rule.[13] After expiration of that first-year period, the rule provided that the Board-selected benchmark replacements shall be the corresponding 1-month, 3-month, 6-month, or 12-month CME Term SOFR plus the applicable tenor spread adjustment identified in the final rule.[14] Effectively, the Board-selected benchmark replacements for LIBOR contracts that are consumer loans as set forth in the Board's final rule are the indices based on SOFR recommended by the ARRC for consumer products for the 1-month, 3-month, 6-month and 12-month USD LIBOR tenors.[15]

III. Legal Authority

A. Section 1022 of the Dodd-Frank Act

The CFPB is issuing this interim final rule under Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) section 1022(b)(1) [16] and TILA section 105(a). Dodd-Frank Act section 1022(b)(1) authorizes the CFPB to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' [17] Section 1022(b)(1) of the Dodd-Frank Act also authorizes the CFPB to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' [18] Among other statutes, Title X of the Dodd-Frank Act and TILA are Federal consumer financial laws.[19] Accordingly, in issuing this interim final rule, the CFPB is exercising its authority under Dodd-Frank Act section 1022(b) to prescribe rules under TILA and Title X that carry out the purposes and objectives and prevent evasion of those laws.

B. The Truth in Lending Act

TILA section 105(a), as amended by the Dodd-Frank Act, directs the CFPB to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that, in the judgment of the CFPB, are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance.[20] Pursuant to TILA section 102(a), a purpose of TILA is to assure a meaningful disclosure of credit terms to enable the consumer to avoid the uninformed use of credit and compare more readily the various credit terms available to the consumer.

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of certain practices. Dodd-Frank Act section 1100A clarified the CFPB's section 105(a) authority by amending that section to provide express authority to prescribe regulations that contain ''additional requirements'' that the CFPB finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. This amendment clarified the authority to exercise TILA section 105(a) authority to prescribe requirements beyond those specifically listed in the statute that meet the standards outlined in section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a) authority to make adjustments and exceptions to the requirements of TILA applies to all transactions subject to TILA, except with respect to the provisions of TILA section 129 that apply to the high-cost mortgages referred to in TILA section 103(bb).[21]

For the reasons discussed in this document, the CFPB is amending Regulation Z with respect to certain provisions that impact the transition from LIBOR indices to other indices to carry out TILA's purposes, including such additional requirements, adjustments, and exceptions as, in the CFPB's judgment, are necessary and proper to carry out the purposes of TILA, prevent circumvention or evasion

[8] 15 U.S.C. 1601 *et seq.*

[9] Safe harbors provided by the LIBOR Act include, among other things, determination that use of the identified replacement indices constitute a reasonable, comparable, or analogous rate, index, or term for LIBOR, a replacement that is based on a methodology or information that is similar or comparable to LIBOR, and a replacement that has historical fluctuations that are substantially similar to those of LIBOR for purposes of TILA and its implementing regulations. *See* LIBOR Act section 105(a), 136 Stat. 830. Additionally, the safe harbors from the LIBOR Act provide that use of the identified replacement indices do not constitute, among other things, a breach of a LIBOR contract. *See* LIBOR Act section 105(b), 136 Stat. 830. Further, the LIBOR Act provides that creditors using the identified replacement indices under the specified conditions in the Act shall not be subject to any claim or cause of action in law or equity or request for equitable relief, or have liability for damages, arising out of the selection or use of the identified replacement index in the Act and the implementation of the identified changes in the Act. *See* LIBOR Act section 105(c), 136 Stat. 830.

[10] 88 FR 5204 (Jan. 26, 2023).

[11] While the Board uses ''one-, three-, and six-month'' to describe these tenors of USD LIBOR, for consistency with this interim final rule, this notice refers to those tenors as 1-month, 3-month, or 6-month tenors, respectively.

[12] 12 CFR 253.4(b)(2).

[13] 12 CFR 253.4(b)(2)(i)(B).

[14] 12 CFR 253.4(b)(2)(ii)(B).

[15] Alt. Reference Rates Comm., *ARRC Recommended Fallbacks for Implementation of its Hardwired Fallback Language* (Mar. 15, 2023), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2023/ARRC-statement-on-1-3-6-12-month-USD-LIBOR.pdf.*

[16] Public Law 111–203, section 1022(b)(1), 124 Stat. 1376, 1980 (2010).

[17] 12 U.S.C. 5512(b)(1).

[18] *Id.*

[19] Dodd-Frank Act section 1002(14), 123 Stat. 1957 (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12)(O), 123 Stat. 1957 (defining ''enumerated consumer laws'' to include TILA).

[20] 15 U.S.C. 1604(a).

[21] 15 U.S.C. 1602(bb).

thereof, or to facilitate compliance. In developing these aspects of this rule pursuant to its authority under TILA section 105(a), the CFPB has considered the purposes of TILA, including ensuring meaningful disclosures, facilitating consumers' ability to compare credit terms, and helping consumers avoid the uninformed use of credit, and the findings of TILA, including strengthening competition among financial institutions and promoting economic stabilization.

IV. Administrative Procedure Act

The Administrative Procedure Act (APA) does not require notice and opportunity for public comment if an agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[22] Similarly, publication of this interim final rule at least 30 days before its effective date is not required where the CFPB has identified good cause for a different effective date.[23]

The CFPB finds that prior notice and public comment are unnecessary given the specific nature of the changes contained in this interim final rule.

First, this interim final rule makes technical changes to conform the nomenclature of Regulation Z to the nomenclature of the LIBOR Act and the Board's implementing regulation. Most notably, this interim final rule substitutes the phrase ''the Board-selected benchmark replacement for consumer loans'' for the phrase ''spread-adjusted indices based on SOFR recommended by the ARRC for consumer products.'' As discussed in part II, in the context of consumer loans, the two phrases are synonymous. In light of the LIBOR Act and the Board's implementing regulation, there is minimal, if any, basis for substantive disagreement regarding this replacement of superseded nomenclature.

Second, this interim final rule acknowledges the determinations made by Congress in the LIBOR Act that the Board-selected benchmark replacements for consumer loans are comparable indices and, for purposes of Regulation Z, have ''historical fluctuations that are substantially similar'' to the LIBOR indices they replace.[24] The enactment of the LIBOR Act and the Board's implementing rule resolved the ambiguity that existed at the time the CFPB issued its 2021 LIBOR Transition Final Rule as to which, if any, SOFR-based replacement index for the 12-month (formerly called the 1-year) tenor would meet these standards. That is the issue that the CFPB needed to reserve judgment about at the time it issued its 2021 LIBOR Transition Final Rule because the ARRC had not yet recommended a SOFR-based replacement index for that tenor; thus, there was no such tenor for the CFPB to analyze at the time. In light of the LIBOR Act and the Board's implementing regulation, the applicable 1-month, 3-month, 6-month, and 12-month tenor of the Board-selected benchmark replacements for consumer loans meet the relevant standards; there is minimal, if any, basis for substantive disagreement on this issue.

Third, and closely related to the first three changes, this interim final rule removes prior Bureau determinations that were rendered obsolete by the LIBOR Act and the Board's implementing regulation. These determinations concerned the comparability of, and the substantial similarity of the historical fluctuations of, the spread-adjusted index based on SOFR recommended by the ARRC for consumer products compared to the LIBOR index it would replace. *See* comments 40(f)(3)(ii)(A)–2.ii, 40(f)(3)(ii)(B)–1.ii, 55(b)(7)(i)–1.ii., 55(b)(7)(ii)–1.ii, and 59(f)–4. But, as discussed above, the spread-adjusted indices based on SOFR recommended by the ARRC for consumer products are the same as ''the Board-selected benchmark replacement for consumer loans.'' In light of the LIBOR Act and the Board's implementing regulation, there is minimal, if any, basis for substantive disagreement on this issue.

Fourth, the CFPB's 2021 LIBOR Transition Proposed Rule already solicited comment on the substance of most of the provisions that are now amended by this interim final rule, making further notice and comment on them duplicative. Specifically, the proposed rule solicited comment on determining that the spread-adjusted index based on SOFR recommended by the ARRC for consumer products for 1-month, 3-month, 6-month, and 1-year or 12-month LIBOR would be comparable to, and have historical fluctuations that substantially similar to, the LIBOR index it would replace.[25] The CFPB's 2021 LIBOR Transition Final Rule, promulgated after notice and an opportunity for public comment, made such determinations with respect to the 1-month, 3-month, and 6-month tenors, but explained in the preamble that the Bureau was reserving judgment on making such determinations with respect to the 1-year or 12-month tenor, leaving those determinations open until the CFPB obtained further information.[26] The need for further information has since been obviated by the determinations made by Congress in the LIBOR Act discussed above.

The CFPB also finds good cause to waive the 30-day delay in effective date. The CFPB is cognizant of the need for these amendments to take effect quickly and thereby remove any confusion that may exist after the Board's regulations implementing the LIBOR Act became effective on February 27, 2023. In particular, making this interim final rule effective at least 45 days prior to the planned cessation of LIBOR on June 30, 2023, is necessary to ensure that consumers with credit card accounts currently using a LIBOR index can receive timely change-in-terms notices when their account is changed to the Board-selected benchmark replacement.

V. Section-by-Section Analysis

Section 1026.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(28) The Board-Selected Benchmark Replacement for Consumer Loans

This interim final rule adds ''the Board-selected benchmark replacement for consumer loans'' as a new defined term in § 1026.2(a)(28) to reference a specific replacement index for consumer products when LIBOR becomes unavailable. As discussed in part II above, the LIBOR Act and the Board's implementing regulation defined ''Board-selected benchmark replacement'' to mean a benchmark replacement identified by the Board that is based on SOFR, including any tenor spread adjustment by the Board.[27] The LIBOR Act, and the Board's implementing regulation, provide for certain adjustments in general for LIBOR contracts and more specifically for LIBOR contracts that are consumer loans. Accordingly, for purposes of promoting the informed use of consumer credit under Regulation Z, the CFPB is creating a new term that is specific to consumer loans. New § 1026.2(a)(28) defines ''the Board-selected benchmark replacement for consumer loans'' as the SOFR-based index selected by the Board, to replace, as applicable, the 1-month, 3-month, 6-month, or 12-month tenors of USD LIBOR and uses the term 12-month tenor instead of 1-year tenor to align with the terminology used in the LIBOR

[22] 5 U.S.C. 553(b)(B).

[23] 5 U.S.C. 553(d)(3).

[24] 12 U.S.C. 5804(a)(2), (3), (5).

[25] *See* 85 FR 36938, 36945–47, 36972, 36987, 36994 (June 18, 2020).

[26] *See* 86 FR 69716, 69723, 69730 (Dec. 8, 2021).

[27] LIBOR Act section 104(e), 136 Stat. 829 (codified at 12 U.S.C. 5803(e)); 12 CFR 253.4.

Act and the Board's implementing regulation. The definition references the LIBOR Act and the Board's implementing rule for additional clarity. The Board-selected benchmark replacements for consumer loans are tenors of the USD IBOR Cash Fallback index for consumer products, which uses the same methodology that the ARRC recommended for SOFR-based replacement indices for consumer products.[28] As such, these terms identify the same index, and the addition of the new defined term and cross-references to it throughout this interim final rule are merely for consistency with the Act and ease of reading. The CFPB solicits feedback on these changes of the interim final rule.

Section 1026.9 Subsequent Disclosure Requirements

9(c) Change in Terms

9(c)(1) Rules Affecting Home-Equity Plans

Section 1026.9(c)(1)(i) provides that for HELOCs subject to § 1026.40 whenever any term required to be disclosed in the account-opening disclosures under § 1026.6(a) is changed or the required minimum periodic payment is increased, the creditor must mail or deliver written notice of the change to each consumer who may be affected. The creditor must mail or deliver the notice at least 15 days prior to the effective date of the change. The 15-day timing requirement does not apply if the change has been agreed to by the consumer; the creditor must give the notice, however, before the effective date of the change.

A creditor is required to disclose in the change-in-terms notice any increased periodic rate or APR as calculated using the replacement index at the time the change-in-terms notice is provided. The periodic rate and APR are terms that are required to be disclosed in the account-opening disclosures under § 1026.6(a) and thus, a creditor must provide a change-in-terms notice disclosing the new periodic rate and APR calculated using the replacement index if the periodic rate or APR is increasing from the rate calculated using the LIBOR index at the time the change-in-terms notice is provided.[29]

Comment 9(c)(1)–4 provides that if: (1) a creditor is replacing a LIBOR index with the index based on ''SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index''; (2) ''the creditor is not changing the margin used to calculate the variable rate as a result of the replacement''; and (3) a periodic rate or the corresponding APR based on the replacement index is unknown to the creditor at the time the change-in-terms notice is provided because the SOFR index has not been published at the time the creditor provides the change-in-terms notice, but will be published by the time the replacement of the index takes effect on the account, then the creditor may comply with any requirement to disclose the amount of the new rate (as calculated using the new index), or a change in the periodic rate or the corresponding APR (as calculated using the replacement index), based on the best information reasonably available, clearly stating that the disclosure is an estimate. Comment 9(c)(1)–4 provides the example that, in this situation, the creditor may state that: (1) information about the rate is not yet available, but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and (2) the rate will vary with the market based on a SOFR index.

For the reasons discussed below, the CFPB is making several changes to comment 9(c)(1)–4. First, the CFPB is replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans'' to align terminology in the rule with the LIBOR Act and the Board's 2022 LIBOR Act Final Rule. As discussed in the section-by-section analysis for § 1026.2(a)(28), this interim final rule also defines the term ''the Board-selected benchmark replacement for consumer loans.'' Revised comment 9(c)(1)–4 includes a cross-reference to that definition. As discussed above, these terms identify the same index, and the change is merely for consistency with the Act and ease of reading.

Second, the CFPB is expanding comment 9(c)(1)–4 to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. As discussed in the Background section, in the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for the 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 12-month (formerly called the 1-year) USD LIBOR index in comment 9(c)(1)–4 until it obtained additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. By operation of the LIBOR Act, all tenors of the Board-selected benchmark replacement constitute a ''comparable index'' to, and have ''historical fluctuations that are substantially similar to'' the LIBOR tenors they replace.[30] Thus, the CFPB is revising comment 9(c)(1)–4 to also apply to the replacement of the 12-month USD LIBOR index with the Board-selected benchmark replacement for consumer loans, facilitating compliance with the advance notice requirements for change-in-terms notices.

While section 104(f) of the LIBOR Act provides that nothing in the Act ''may be construed to alter or impair— . . . (5) any provision of Federal consumer financial law that—(A) requires creditors to notify borrowers regarding a change-in-terms,'' the CFPB is not relying on the LIBOR Act for authority to revise comment 9(c)(1)–4. However, in this unique circumstance, the CFPB has previously stated a need to permit creditors permission to provide estimates for change-in-terms notices, and interprets § 1026.5(c) to be consistent with revised comment 9(c)(1)–4 in doing so. Section 1026.5(c) provides, in relevant part, that if any information necessary for accurate disclosure is unknown to the creditor, it must make the disclosure based on the best information reasonably available and must state clearly that the disclosure is an estimate. Because of the unique circumstances of the LIBOR transition, the CFPB previously amended comment 9(c)(1)–4 to provide permit creditors the ability to provide estimates for disclosures previously excluded from § 1026.5(c). The revisions to comment 9(c)(1)–4 in this interim final rule are consistent with this reasoning. Thus, the revisions to comment 9(c)(1)–4 are consistent with revisions discussed below that provide

[28] *See* 88 FR 5204, 5211–15 (Jan. 26, 2023); *see also* Alt. Reference Rates Comm., *ARRC Recommended Fallbacks for Implementation of its Hardwired Fallback Language* (Mar. 15, 2023), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2023/ARRC-statement-on-1-3-6-12-month-USD-LIBOR.pdf.*

[29] *See* 12 CFR 1026.6(a)(1)(ii). Comment 6(a)(1)(ii)–3 provides that in disclosing the rate(s) in effect for a variable-rate plan at the time of the account-opening disclosures (as is required by § 1026.6(a)(1)(ii)), the creditor may use an insert showing the current rate; may give the rate as of a specified date and then update the disclosure from time to time, for example, each calendar month; or may disclose an estimated rate under § 1026.5(c).

[30] LIBOR Act section 105(a)(2), (3) and (5), 136 Stat. 830.

that if a creditor uses the Board-selected benchmark replacement for consumer loans to replace 12-month USD LIBOR and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the conditions in § 1026.40(f)(3)(ii)(A) and (B) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index.[31]

Under § 1026.9(c)(1)(i), the change-in-terms notice for HELOC accounts subject to § 1026.40 generally must be mailed or delivered at least 15 days prior to the effective date of the change. Also, the Board-selected benchmark replacement for consumer loans to replace the 12-month USD LIBOR, like the 1-month, 3-month, and 6-month USD LIBOR replacement tenors, will not be published until Monday, July 3, 2023, which is the first weekday after Friday, June 30, 2023, when LIBOR is currently anticipated to sunset for these USD LIBOR tenors. The revisions to comment 9(c)(1)–4 are intended to facilitate compliance with the 15-day advance notice requirement for change-in-terms notices by allowing creditors in the situation described above to provide change-in-terms notices prior to the Board-selected benchmark replacement for consumer loans to replace 12-month USD LIBOR being published, so that creditors are not left without an index to use on the account after the Board-selected benchmark replacement for consumer loans to replace 12-month USD LIBOR is published, but before it becomes effective on the account.

As is the case for the Board-selected benchmark replacements for consumer loans for 1-month, 3-month, and 6-month USD LIBOR tenors, the Bureau has determined that the information described in revised comment 9(c)(1)–4 sufficiently notifies consumers of the estimated periodic rate and APR as calculated using the Board-selected benchmark replacement for consumer loans to replace 12-month USD LIBOR, even though the Board-selected benchmark replacement for consumer loans is not being published at the time the notice is sent, as long as the Board-selected benchmark replacement for consumer loans is published by the time the replacement of the index takes effect on the account. For example, in this situation, comment 9(c)(1)–4 provides that the creditor may state that: (1) information about the rate is not yet available, but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and (2) the rate will vary with the market based on a SOFR index. The CFPB solicits comment on these changes in the interim final rule.

9(c)(2) Rules Affecting Open-End (Not Home-Secured) Plans

9(c)(2)(iv) Disclosure Requirements

TILA section 127(i)(1), which was added by the Credit CARD Act of 2009,[32] provides that in the case of a credit card account under an open-end consumer credit plan, a creditor generally must provide written notice of an increase in an APR not later than 45 days prior to the effective date of the increase.[33] In addition, TILA section 127(i)(2) provides that in the case of a credit card account under an open-end consumer credit plan, a creditor must provide written notice of any significant change, as determined by a rule of the CFPB, in terms (other than APRs) of the cardholder agreement not later than 45 days prior to the effective date of the change.[34]

Section 1026.9(c)(2)(i)(A) provides that for open-end plans other than HELOCs subject to § 1026.40, a creditor generally must provide written notice of a ''significant change in account terms'' at least 45 days prior to the effective date of the change to each consumer who may be affected. Section 1026.9(c)(2)(ii) defines ''significant change in account terms'' to mean, in relevant part, a change in the terms required to be disclosed under § 1026.6(b)(1) and (2), an increase in the required minimum periodic payment, or a change to a term required to be disclosed under § 1026.6(b)(4). The index that is replacing the LIBOR index pursuant to § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) is a disclosure required under § 1026.6(b)(2)(i)(A) and (4)(ii)(B) and thus, is a term that meets the definition of a ''significant change in account terms.'' As a result, a creditor must provide a change-in-terms notice disclosing the index that is replacing the LIBOR index.

Section 1026.9(c)(2)(iv) provides the disclosure requirements for this written notice. Comment 9(c)(2)(iv)–2.i provides details about the general disclosure requirements if the creditor is changing the index use to calculate a variable rate. A creditor also is required to disclose in the change-in-terms notice any increased periodic rate or APR calculated using the replacement index at the time the change-in-terms notice is provided. The periodic rate and APR are terms that are required to be disclosed in the account-opening disclosures under § 1026.6(b) and thus, a creditor must provide a change-in-terms notice disclosing the new periodic rate and APR calculated using the replacement index if the periodic rate or APR is increasing from the rate calculated using the LIBOR index at the time the change-in-terms notice is provided.[35]

Comment 9(c)(2)(iv)–2.ii provides additional details on how a creditor may comply with the disclosure requirements under § 1026.9(c)(2)(iv) when the creditor is replacing a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products in certain circumstances. This comment provides that if: (1) a creditor is replacing a LIBOR index with the ''SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index''; (2) the creditor is not changing the margin used to calculate the variable rate as a result of the replacement; and (3) a periodic rate or the corresponding APR based on the replacement index is unknown to the creditor at the time the change-in-terms notice is provided because the SOFR index has not been published at the time the creditor provides the change-in-terms notice, but will be published by the time the replacement of the index takes effect on the account, then the creditor may comply with any requirement to disclose in the change-in-terms notice the amount of the periodic rate or APR (or changes in these amounts) as calculated using the replacement index based on the best information reasonably available, clearly stating that the disclosure is an estimate. Comment 9(c)(2)(iv)–2.ii provides the example that, in this situation, the creditor may state that: (1) information about the rate is not yet available, but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and (2) the rate will vary with the market based on a SOFR index.

[31] *See* comments 40(f)(3)(ii)(A)–3 and (B)–3; *see also* the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for a discussion of the rationale for the Bureau making this determination.

[32] Public Law 111–24, 123 Stat. 1734 (2009).

[33] 15 U.S.C. 1637(i)(1).

[34] 15 U.S.C. 1637(i)(2).

[35] *See* 12 CFR 1026.6(b)(4)(i)(A). Section 1026.6(b)(4)(ii)(G) provides that for purposes of disclosing variable rates in the account-opening disclosures, a rate generally is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

For the reasons discussed below, the CFPB is making several changes to comment 9(c)(2)(iv)–2.ii. First, the CFPB is replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans'' to align terminology in the rule with the LIBOR Act and the Board's 2022 LIBOR Act Final Rule. As discussed in the section-by-section analysis for § 1026.2(a)(28), this interim final rule also defines the term ''the Board-selected benchmark replacement for consumer loans.'' Revised comment 9(c)(2)(iv)–2.ii includes a cross-reference to that definition. As discussed above, these terms identify the same index, and the change is merely for consistency with the Act and ease of reading.

Second, the CFPB is expanding comment 9(c)(2)(iv)–2.ii to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. As discussed in the Background section, in the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 12-month (formerly called the 1-year) USD LIBOR index in comment 9(c)(2)(iv)–2.ii until it obtained additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. By operation of the LIBOR Act, all tenors of the Board-selected benchmark replacements constitute a ''comparable index'' to, and have ''historical fluctuations that are substantially similar to'' the LIBOR tenors they replace.[36] Thus, the CFPB is revising comment 9(c)(2)(iv)–2.ii to also apply to the replacement of the 12-month USD LIBOR index with the Board-selected benchmark replacement for consumer loans, facilitating compliance with the advance notice requirements for change-in-terms notices.

While section 104(f) of the LIBOR Act provides that nothing in the Act ''may be construed to alter or impair— . . . (5) any provision of Federal consumer financial law that—(A) requires creditors to notify borrowers regarding a change-in-terms,'' the CFPB is not relying on the LIBOR Act for authority to revise comment 9(c)(2)(iv)–2.ii. Instead, in this unique circumstance, the CFPB interprets § 1026.5(c) to be consistent with revised comment 9(c)(2)(iv)–2.ii. Section 1026.5(c) provides in relevant part, that if any information necessary for accurate disclosure is unknown to the creditor, it must make the disclosure based on the best information reasonably available and must state clearly that the disclosure is an estimate. Revised comment 9(c)(2)(iv)–2.ii also is consistent with revisions discussed below that provide that if a creditor uses the Board-selected benchmark replacement for consumer loans to replace the 12-month USD LIBOR index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the conditions in § 1026.55(b)(7)(i) and (ii) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index.[37]

As described above, under § 1026.9(c)(2), the change-in-terms notice for open-end credit that is not subject to § 1026.40 (including credit card accounts) generally must be mailed or delivered at least 45 days prior to the effective date of the change. Also, the Board-selected benchmark replacement for consumer loans to replace the 12-month USD LIBOR index, like the 1-month, 3-month, and 6-month USD LIBOR replacement tenors, will not be published until Monday, July 3, 2023, which is the first weekday after Friday, June 30, 2023, when LIBOR is currently anticipated to sunset for these USD LIBOR tenors. This interim final rule provision is intended to facilitate compliance with the 45-day advance notice requirement for change-in-terms notices by allowing creditors in the situation described above to provide change-in-terms notices prior to the Board-selected benchmark replacement for consumer loans to replace the 12-month USD LIBOR index being published, so that creditors are not left without an index to use on the account after the Board-selected benchmark replacement for consumer loans to replace the 12-month USD LIBOR index is published, but before it becomes effective on the account.

As is the case for the Board-selected benchmark replacements for consumer loans for 1-month, 3-month, and 6-month USD LIBOR tenors, the Bureau has determined that the information described in revised comment 9(c)(2)(iv)–2.ii sufficiently notifies consumers of the estimated rate calculated using the Board-selected benchmark replacement for consumer loans to replace the 12-month USD LIBOR index, even though the Board-selected benchmark replacement for consumer loans to replace the 12-month USD LIBOR index is not being published at the time the notice is sent, as long as the Board-selected benchmark replacement for consumer loans to replace the 12-month USD LIBOR index is published by the time the replacement of the index takes effect on the account. For example, in this situation, comment 9(c)(2)(iv)–2.ii provides that the creditor may state that: (1) information about the rate is not yet available, but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and (2) the rate will vary with the market based on a SOFR index. The CFPB solicits comment on these changes in the interim final rule.

Section 1026.20 Disclosure Requirements Regarding Post-Consummation Events 20(a) Refinancings

Section 1026.20 includes disclosure requirements regarding post-consummation events for closed-end credit. Section 1026.20(a) and its Official Interpretations define when a refinancing occurs for closed-end credit and provide that a refinancing is a new transaction requiring new disclosures to the consumer. Comment 20(a)–3.ii.B explains that a new transaction subject to new disclosures results if the creditor adds a variable-rate feature to the obligation, even if it is not accomplished by the cancellation of the old obligation and substitution of a new one. The comment also states that a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction to a comparable index, whether the change replaces the existing index or substitutes an index for one that no longer exists. The comment also includes an illustrative example which provides that a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction from the 1-month, 3-month, or 6-month USD LIBOR index to the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index respectively because the

[36] LIBOR Act section 105(a)(2), (3) and (5), 136 Stat. 830.

[37] *See* comments 55(b)(7)(i)–2 and (ii)–3; *see also* the section-by-section analysis of § 1026.40(f)(3)(ii)(A) for a discussion of the rationale for the Bureau making this determination.

replacement index is a comparable index to the corresponding USD LIBOR index.[38] Comment 20(a)–3.iv provides examples of the types of factors that may need to be considered to determine whether a replacement index is comparable to a particular LIBOR index for closed-end transactions.

For the reasons discussed below, the CFPB is making several changes to comment 20(a)–3.ii.B. First, the CFPB is replacing references to the term spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the term ''the Board-selected benchmark replacement for consumer loans'' to align terminology in the rule with the LIBOR Act and the Board's 2022 LIBOR Act Final Rule. As discussed in the section-by-section analysis for § 1026.2(a)(28), this interim final rule also defines the term ''the Board-selected benchmark replacement for consumer loans.'' Revised comment 20(a)–3.ii.B includes a cross-reference to that definition. As discussed above, these terms identify the same index, and the change is merely for consistency with the Act and ease of reading.

Second, the CFPB is expanding language in the example set forth in comment 20(a)–3.ii.B to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. As discussed in the Background section, in the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 12-month (formerly called the 1-year) USD LIBOR index in comment 20(a)–3.ii.B until it obtained additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. By operation of the LIBOR Act, all tenors of the Board-selected benchmark replacements are considered to constitute a ''comparable index,'' and have ''historical fluctuations that are substantially similar to,'' the LIBOR tenors they replace.[39] As such, as with the existing examples in comment 20(a)–3.ii.B for the 1-month, 3-month, and 6-month USD LIBOR tenors, in this interim final rule the CFPB is extending the example to also apply to the replacement of the 12-month USD LIBOR index with the Board-selected benchmark replacement for consumer loans to facilitate the LIBOR transition. The example in revised comment 20(a)–3.ii.B provides a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction from the 12-month USD LIBOR tenor to the applicable tenor of the Board-selected benchmark replacement.

Third, the CFPB is revising comment 20(a)–3.iv by adding an exception for the Board-selected benchmark replacements for consumer loans, as defined in new § 1026.2(a)(28). When using the Board-selected benchmark replacement for consumer loans, a creditor need not consider the types of factors used to determine whether a replacement index is comparable to a particular LIBOR tenor for closed-end credit. Because the Board's final rule, in implementing the LIBOR Act, has determined that the Board-selected benchmark replacements for consumer loans are indices that are comparable to their respective LIBOR tenors, and the Bureau has determined in this interim final rule that this index meets Regulation Z's ''comparable'' standard with respect to a particular LIBOR index, the factors need not be considered. While the CFPB had already applied the factors to the SOFR-based 1-month, 3-month, and 6-month LIBOR tenor replacement indices in its 2021 LIBOR Transition Final Rule, by operation of law, the factors now also need not be considered with respect to the Board-selected benchmark replacement for consumer loans for the 12-month LIBOR tenor in order for the index to satisfy Regulation Z's ''comparable'' standard. The CFPB solicits comments on these changes in the interim final rule.

Section 1026.40 Requirements for Home Equity Plans

40(f) Limitations on Home Equity Plans

40(f)(3)

40(f)(3)(ii)

TILA section 137(c)(1) provides that no open-end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling may contain a provision that permits a creditor to change unilaterally any term except in enumerated circumstances set forth in TILA section 137(c).[40] TILA section 137(c)(2)(A) provides that a creditor may change the index and margin applicable to extensions of credit under such a plan if the index used by the creditor is no longer available and the substitute index and margin will result in a substantially similar interest rate.[41] In implementing TILA section 137(c), § 1026.40(f)(3) prohibits a creditor from changing the terms of a HELOC subject to § 1026.40 except in enumerated circumstances set forth in § 1026.40(f)(3).

Section 1026.40(f)(3)(ii)(A) provides that a creditor may change the index and margin used under the HELOC plan if the original index is no longer available, the replacement index has historical fluctuations substantially similar to that of the original index, and the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the original index became unavailable. Section 1026.40(f)(3)(ii)(A) also provides if the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable. Section 1026.40(f)(3)(ii)(B) contains LIBOR-specific provisions that permit creditors for HELOC plans subject to § 1026.40 that use a LIBOR index for calculating variable rates to replace the LIBOR index and change the margins for calculating the variable rates on or after April 1, 2022, in certain circumstances. Comment 40(f)(3)(ii)–1 provides detail on the interaction among the unavailability provisions in § 1026.40(f)(3)(ii)(A), the LIBOR-specific provisions in § 1026.40(f)(3)(ii)(B), and the contractual provisions that apply to a HELOC plan.

As discussed in more detail below in this section-by-section analysis, this interim final rule makes a number of changes with respect to §§ 1026.40(f)(3)(ii), (f)(3)(ii)(A), (f)(3)(ii)(B), and related Official Interpretations. In general, it: (1) replaces references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new defined term ''the Board-selected benchmark replacement for consumer loans''; (2) replaces references to the 1-year USD LIBOR index with the 12-month USD LIBOR index; (3) expands the Official Interpretations to include a

[38] By ''corresponding USD LIBOR index,'' the Bureau meant the specific USD LIBOR index for which the ARRC recommended the replacement index as a replacement for consumer products. Thus, because the ARRC has recommended, for consumer products, a specific spread-adjusted 6-month term rate SOFR index for consumer products as a replacement for the 6-month USD LIBOR index, the 6-month USD LIBOR index would be the ''corresponding USD LIBOR index'' for that specific spread-adjusted 6-month term rate SOFR index for consumer products.

[39] LIBOR Act section 105(a)(2), (3) and (5), 136 Stat. 830.

[40] 15 U.S.C. 1647(c).

[41] 15 U.S.C. 1647(c)(2)(A).

replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule; (4) provides that the Board-selected benchmark replacements for consumer loans to replace 1-month, 3-month, 6-month, and 12-month USD LIBOR indices have ''historical fluctuations that are substantially similar to'' the LIBOR tenors they replace; (5) provides if the creditor selects to use the Board-selected benchmark replacement for consumer loans, the creditor must use the index value of this index and the LIBOR index from a specified timeframe in determining whether the APR is substantially similar; (6) updates guidance on determining whether a replacement index has historical fluctuations that are substantially similar to those of certain USD LIBOR indices in relation to the Board-selected benchmark replacement for consumer loans; and (7) explains when a creditor that uses the Board-selected benchmark replacement for consumer loans satisfies the condition that the replacement index and margin would have resulted in an APR substantially similar to the rate in effect at the time LIBOR becomes unavailable or calculated using the LIBOR index.

Interaction among § 1026.40(f)(3)(ii)(A) and (B) and contractual provisions. Comment 40(f)(3)(ii)–1 provides that a creditor may use either the provision in § 1026.40(f)(3)(ii)(A) or § 1026.40(f)(3)(ii)(B) to replace a LIBOR index used under a HELOC plan subject to § 1026.40 so long as the applicable conditions are met for the provision used.[42] It provides examples of when a creditor may use these provisions. Each of these examples assumes that the LIBOR index used under the plan becomes unavailable after June 30, 2023. Specifically, comment 40(f)(3)(ii)–1.i provides an example where a HELOC contract provides that a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, comment 40(f)(3)(ii)–1.i explains that the creditor may use the unavailability provisions in § 1026.40(f)(3)(ii)(A) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Comment 40(f)(3)(ii)–1.i also explains that the LIBOR-specific provisions in § 1026.40(f)(3)(ii)(B) generally provide that a creditor may replace the LIBOR index if the replacement index value in effect on October 18, 2021, and the replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception provided under comment 40(f)(3)(ii)–1.i is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

The CFPB is revising the example in comment 40(f)(3)(ii)–1.i by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans'' to align terminology in the rule with the LIBOR Act and the Board's 2022 LIBOR Act Final Rule. As discussed above, this interim final rule also defines the term ''the Board-selected benchmark replacement for consumer loans.'' It means the SOFR-based index selected by the Board for consumer loans, as set forth in the LIBOR Act and the Board's implementing regulation, to replace, as applicable, the 1-month, 3-month, 6-month, or 12-month tenors of USD LIBOR. Revised comment 40(f)(3)(ii)–1.ii includes a cross-reference to this definition. For this new definition and throughout this interim final rule, the CFPB is using the term 12-month tenor instead of 1-year tenor to align with the terminology used in the LIBOR Act and the Board's implementing regulation. The Board-selected benchmark replacement for consumer loans is the USD IBOR Cash Fallback index for consumer products, which uses the same methodology that the ARRC recommended for SOFR-based replacement indices for consumer products.[43] As such, these terms identify the same index, and the change is merely for consistency with the Act and ease of reading.

40(f)(3)(ii)(A)

Section 1026.40(f)(3)(ii)(A) provides that a creditor may change the index and margin used under the HELOC plan if the original index is no longer available, the replacement index has historical fluctuations substantially similar to that of the original index, and the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the original index became unavailable. Section 1026.40(f)(3)(ii)(A) also provides if the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce an APR substantially similar to the rate in effect when the original index became unavailable. Comment 40(f)(3)(ii)(A)–2 provides detail on determining whether a replacement index that is not newly established has historical fluctuations that are substantially similar to those of the LIBOR index used under the plan for purposes of § 1026.40(f)(3)(ii)(A). It provides that for purposes of replacing a LIBOR index used under a plan pursuant to § 1026.40(f)(3)(ii)(A), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

The Board-selected benchmark replacements for consumer loans have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. Comment

[42] For further details about these provisions, *see* the section-by-section analyses of § 1026.40(f)(3)(ii)(A) and (B), *infra.*

[43] *See* 88 FR 5204, 5211–15 (Jan. 26, 2023). *See also* Alt. Reference Rates Comm., S*ummary of the ARRC's Fallback Recommendations* (Oct. 6, 2021), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/spread-adjustments-narrative-oct-6-2021. See also* Alt. References Rates Comm., *ARRC Recommended Fallbacks for Implementation of its Hardwired Fallback Language* (Mar. 15, 2023), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2023/ARRC-statement-on-1-3-6-12-month-USD-LIBOR.pdf.*

40(f)(3)(ii)(A)–2.ii provides a determination by the Bureau that effective April 1, 2022, the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively.[44] It provides that the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that the SOFR-based spread-adjusted index for consumer products and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable in order to use this SOFR-based spread-adjusted index for consumer products as the replacement index for the applicable LIBOR index.

The CFPB is making several changes to comments 40(f)(3)(ii)(A)–2, –2.i, and –2.ii. First, as discussed in more detail in the section-by-section analysis for § 1026.40(f)(3)(ii) above, and for the reasons discussed therein, the CFPB is revising comment 40(f)(3)(ii)(A)–2.ii by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans.'' Revised comment 40(f)(3)(ii)(A)–2.ii includes a cross-reference to this definition. Based on these changes, revised comment 40(f)(3)(ii)(A)–2.ii provides that the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) requiring the Board-selected benchmark replacement for consumer loans and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable.

Second, the CFPB is expanding comment 40(f)(3)(ii)(A)–2.ii to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. Comment 40(f)(3)(ii)(A)–2.ii does not discuss the 12-month (formerly called 1-year) USD LIBOR.[45] In the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for the 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 1-year USD LIBOR index in comment 40(f)(3)(ii)(A)–2.ii until it obtained additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. Section 105(a)(5) of the LIBOR Act provides that, for purposes of TILA and its implementing regulations, a Board-selected benchmark replacement and the selection or use of a Board-selected benchmark replacement as a benchmark replacement with respect to a LIBOR contract constitutes a replacement that has historical fluctuations that are substantially similar to those of the LIBOR index that it is replacing. The Board's regulation provides that for a LIBOR contract that is a consumer loan, the benchmark replacement shall be the corresponding 1-month, 3-month, 6-month, or 12-month CME Term SOFR plus the applicable amounts or tenor spread adjustment.[46] The CFPB is relying on the determination in the LIBOR Act and the Board's implementing regulation that the Board-selected benchmark replacement for consumer loans has historical fluctuations that are substantially similar to the USD LIBOR tenor that it is replacing. Thus, the CFPB is revising comment 40(f)(3)(ii)(A)–2.ii to also apply this determination of the historical fluctuations substantially similar standard to the replacement of the 12-month USD LIBOR index with the Board-selected benchmark replacement for consumer loans.

Third, based on the LIBOR Act and the Board's implementing regulation, the Bureau is removing its prior determination that became effective April 1, 2022, concerning the spread-adjusted indices based on SOFR recommended by the ARRC for consumer products. By operation of the LIBOR Act and the Board's implementing regulation, all tenors of the Board-selected benchmark replacements have ''historical fluctuations that are substantially similar to'' the LIBOR tenors they replace.[47] Thus, revised comment 40(f)(3)(ii)(A)–2.ii provides that the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, and 12-month USD LIBOR indices has historical fluctuations that are substantially similar to USD LIBOR tenor they are replacing. The Bureau's prior determination is obsolete. The ''spread-adjusted indices based on SOFR recommended by the ARRC for consumer products'' are the same as ''the Board-selected benchmark replacement for consumer loans'' and the LIBOR Act determined that the latter has historical fluctuations that are substantially similar to the LIBOR tenors they replace. Removing this obsolete determination will avoid confusion.

Fourth, to facilitate compliance, this interim final rule revises comment 40(f)(3)(ii)(A)–2 by specifying that the Board-selected benchmark replacements for consumer loans is an exception to the general requirement providing that the historical fluctuations considered when replacing a LIBOR index used under a plan are the historical fluctuations up through the earlier of when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar. Accordingly, this interim final rule also revises comment 40(f)(3)(ii)(A)–2.ii to provide that no further determination is required that the Board-selected benchmark replacements for consumer loans meets the ''historical fluctuations are substantially similar'' standard. The changes to comment 40(f)(3)(ii)(A)–2 in relation to the Board-selected benchmark replacements for consumer loans do not alter or modify the Bureau's determination set forth in comment 40(f)(3)(ii)(A)–2.i in relation to the prime rate as the replacement index for the 1-month or 3-month USD LIBOR index, except to provide that no further determination is needed that the prime rate published in the Wall Street Journal meets this standard for these tenors. The CFPB solicits comments on these changes in the interim final rule.

Additional guidance on determining whether a replacement index has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. In the 2021 LIBOR Transition Final Rule, the CFPB noted that commenters on the proposed rule had asked for additional guidance on

[44] 86 FR 69716, 69743 & n.106 (Dec. 8, 2021) (acknowledging that while the spread-adjusted term SOFR rates have not always moved in tandem with LIBOR, the Bureau determined that: (1) the historical fluctuations of 6-month USD LIBOR are substantially similar to those of the 6-month spread-adjusted term SOFR rates; (2) the historical fluctuations of 3-month USD LIBOR are substantially similar to those of 3-month spread-adjusted term SOFR rates; and (3) the historical fluctuations of 1-month USD LIBOR are substantially similar to those of the 1-month spread-adjusted term SOFR rates).

[45] *See* 85 FR 36938, 36972, 36994 (June 18, 2020) (proposing comment 59(f)–4 and noting the Bureau's 2020 notice of proposed rulemaking proposed and solicited comment on allowing use of a specific replacement formula where the index change involved the 1-year tenor in addition to the 1-month, 3-month, and 6-month tenors).

[46] 12 CFR 253.4(b)(2)(i)(B) and (ii)(B).

[47] LIBOR Act section 105(a)(5), 136 Stat. 830.

how to determine whether a replacement index has historical fluctuations that are substantially similar to those of a particular LIBOR index, including requesting that the CFPB provide a principles-based standard for making such determinations. The CFPB did not set forth a principles-based standard at that time because these determinations are fact-specific, and they depend on the replacement index being considered and the LIBOR tenor being replaced. Instead, to facilitate compliance with Regulation Z, the CFPB added comment 40(f)(3)(ii)(A)–2.iii to provide a non-exhaustive list of factors to be considered in making these determinations. Specifically, comment 40(f)(3)(ii)(A)2.iii provides that the relevant factors to be considered depend on the replacement index being considered and the LIBOR index being replaced. Comment 40(f)(3)(ii)(A)–2.iii also provides that these determinations may need to consider certain aspects of the historical data itself for a particular replacement index. In the 2021 LIBOR Transition Final Rule, the CFPB considered the relevant factors in determining that: (1) Prime has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR; and (2) the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively.

The CFPB is revising comment 40(f)(3)(ii)(A)–2.iii by adding an exception for the Board-selected benchmark replacements for consumer loans, as defined in new § 1026.2(a)(28). When using the Board-selected benchmark replacements for consumer loans, a creditor need not consider the types of factors used to determine whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index. Because the Board's final rule, in implementing the LIBOR Act, has determined that the Board-selected benchmark replacements for consumer loans are replacement indices that have historical fluctuations that are substantially similar to their respective LIBOR tenors, and the CFPB has determined in this interim final rule that this index meets the Regulation Z ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index, the factors need not be considered. While the CFPB had already applied the factors to the SOFR-based 1-month, 3-month, and 6-month LIBOR tenor replacement indices in its 2021 LIBOR Transition Final Rule, by operation of law, the factors need not be considered with respect to the Board-selected benchmark replacement for consumer loans for the 12-month LIBOR tenor in order for the index to satisfy Regulation Z's ''historical fluctuations are substantially similar'' standard. The CFPB solicits comments on these changes in the interim final rule.

Substantially similar rate when LIBOR becomes unavailable. Section 1026.40(f)(3)(ii)(A) provides that the replacement index and replacement margin must produce an APR substantially similar to the rate that was in effect based on the LIBOR index used under the plan when the LIBOR index became unavailable. Comment 40(f)(3)(ii)(A)–3 provides that, for comparing rates, a creditor generally must use the value of the replacement index and the LIBOR index on the day that the LIBOR index becomes unavailable. It provides that if the replacement index is not published on the day that the LIBOR index becomes unavailable, the creditor generally must use the previous calendar day that both indices are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception under comment 40(f)(3)(ii)(A)–3 is that, if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

Comment 40(f)(3)(ii)(A)–3 also states that for purposes of § 1026.40(f)(3)(ii)(A), if a creditor uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(A) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable.

The CFPB is making several changes to comment 40(f)(3)(ii)(A)–3. First, as discussed in more detail in the section-by-section analysis for § 1026.40(f)(3)(ii) above, and for the reasons discussed therein, the CFPB is revising comment 40(f)(3)(ii)(A)–3 by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans.''

Second, the CFPB is expanding comment 40(f)(3)(ii)(A)–3 to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. Comment 40(f)(3)(ii)(A)–3 does not discuss the 12-month (formerly called 1-year) USD LIBOR. In the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for the 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 1-year USD LIBOR index in comment 40(f)(3)(ii)(A)–3 until it obtains additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. Sections 105(a)(2), (a)(3), and (a)(5) of the LIBOR Act provide that, for purposes of TILA and its implementing regulations, a Board-selected benchmark replacement and the selection or use of a Board-selected benchmark replacement as a benchmark replacement with respect to a LIBOR contract constitutes a ''comparable index'' and ''has historical fluctuations that are substantially similar'' to those of the USD LIBOR index they are replacing. The Board's regulation provides that for a LIBOR contract that is a consumer loan, the benchmark replacement shall be the corresponding 1-month, 3-month, 6-month, or 12-month CME Term SOFR plus the applicable amounts or tenor spread adjustment.[48] The determination in the LIBOR Act and the Board's implementing regulation applies not only to the Board-selected benchmark replacement for consumer loans that is replacing the 1-month, 3-month, and 6-month USD LIBOR, but also to the Board-selected benchmark replacement for consumer loans that is replacing the 12-month tenor of LIBOR. Thus, the

[48] 12 CFR 253.4(b)(2)(i)(B) and (ii)(B).

CFPB is revising comment 40(f)(3)(ii)(A)–3 to provide that for purposes of § 1026.40(f)(3)(ii)(A), if a creditor uses the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(A) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. The CFPB solicits comment on these changes of the interim final rule.

40(f)(3)(ii)(B)

Section 1026.40(f)(3)(ii)(B) contains LIBOR-specific provisions that permit creditors for HELOC plans subject to § 1026.40 that use a LIBOR index for calculating variable rates to replace the LIBOR index and change the margins for calculating the variable rates on or after April 1, 2022, in certain circumstances. The CFPB explained in the 2021 LIBOR Transition Final Rule how as a practical matter, § 1026.40(f)(3)(ii)(B) allows creditors for HELOCs to provide the 15-day change-in-terms notices required under § 1026.9(c)(1) prior to the LIBOR indices becoming unavailable, and thus allows those creditors to avoid being left without a LIBOR index to use in calculating the variable rate before the replacement index and margin become effective. Also, § 1026.40(f)(3)(ii)(B) allows HELOC creditors to provide the change-in-terms notices, and replace the LIBOR index used under the plans, on accounts on a rolling basis, rather than having to provide the change-in-terms notices, and replace the LIBOR index, for all its accounts at the same time as the LIBOR index used under the plan becomes unavailable. The CFPB believes that this advance notice of the replacement index and any change in the margin is important to consumers to inform them of how variable rates will be determined going forward after the LIBOR index is replaced.

Section 1026.40(f)(3)(ii)(B) provides that if a variable rate on a HELOC subject to § 1026.40 is calculated using a LIBOR index, a creditor may replace the LIBOR index and change the margin for calculating the variable rate on or after April 1, 2022, as long as: (1) the historical fluctuations in the LIBOR index and replacement index were substantially similar; and (2) the replacement index value in effect on October 18, 2021, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on October 18, 2021, and the replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Section 1026.40(f)(3)(ii)(B) also provides that if the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. As set forth in § 1026.40(f)(3)(ii)(B), the one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. Comment 40(f)(3)(ii)(B)–1 provides detail on determining whether a replacement index that is not newly established has historical fluctuations that are substantially similar to those of the LIBOR index used under the plan for purposes of § 1026.40(f)(3)(ii)(B). It provides that for purposes of replacing a LIBOR index used under a plan pursuant to § 1026.40(f)(3)(ii)(B), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination by the Bureau. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the creditor makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar.

The CFPB is making two changes to § 1026.40(f)(3)(ii)(B). As discussed in more detail in the section-by-section analysis for § 1026.40(f)(3)(ii) above, and for the reasons discussed therein, the CFPB is revising § 40(f)(3)(ii)(B) by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans'' and is using the term 12-month tenor instead of 1-year tenor with respect to the USD LIBOR index.

The Board-selected benchmark replacements for consumer loans have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. Comment 40(f)(3)(ii)(B)–1.ii provides a determination by the Bureau that, effective April 1, 2022, the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively. Comment 40(f)(3)(ii)(B)–1.ii also provides that in order to use this SOFR-based spread-adjusted index for consumer products as the replacement index for the applicable LIBOR index, the creditor also must satisfy the condition in § 1026.40(f)(3)(ii)(B) that the SOFR-based spread-adjusted index for consumer products and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Because of the exception in § 1026.40(f)(3)(ii)(B), the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) with respect to revised comments 40(f)(3)(ii)(A)–2, –2.i, and –2.ii, the interim final rule makes similar changes to comments 40(f)(3)(ii)(B)–1, –1.i, and –1.ii. First, the CFPB is revising comments 40(f)(3)(ii)(B)–1.ii by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans.'' Revised comment 40(f)(3)(ii)(B)–1.ii includes a cross-reference to this definition. Based on these changes, revised comment 40(f)(3)(ii)(B)–1.ii provides that the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(B) requiring the Board-selected benchmark replacement for consumer loans and replacement margin to produce an APR substantially similar to the rate calculated using the LIBOR index and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

Second, the CFPB is expanding comment 40(f)(3)(ii)(B)–1.ii to include a replacement index for the 12-month USD LIBOR not previously addressed in the 2021 LIBOR Transition Final Rule. Comment 40(f)(3)(ii)(B)–1.ii does not discuss the 12-month (formerly called 1-year) USD LIBOR.[49] In the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for the 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 1-year USD LIBOR index in comment 40(f)(3)(ii)(B)–1.ii. until it obtained additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. Section 105(a)(5) of the LIBOR Act provides that, for purposes of TILA and its implementing regulations, a Board-selected benchmark replacement and the selection or use of a Board-selected benchmark replacement as a benchmark replacement with respect to a LIBOR contract constitutes a replacement that has historical fluctuations that are substantially similar to those of the LIBOR index that it is replacing. The Board's regulation provides that for a LIBOR contract that is a consumer loan, the benchmark replacement shall be the corresponding 1-month, 3-month, 6-month, or 12-month CME Term SOFR plus the applicable amounts or tenor spread adjustment.[50] The CFPB is relying on the determination in the LIBOR Act and the Board's implementing regulation that the Board-selected benchmark replacements for consumer loans have historical fluctuations that are substantially similar to the USD LIBOR tenor they are replacing. Thus, the CFPB is revising comment 40(f)(3)(ii)(B)–1.ii to also apply this determination of the historical fluctuations substantially similar standard to the replacement of the 12-month USD LIBOR index with the Board-selected benchmark replacement for consumer loans.

Third, based on the LIBOR Act and the Board's implementing regulation, the Bureau is removing its prior determination that became effective April 1, 2022, concerning the spread-adjusted indices based on SOFR recommended by the ARRC for consumer products. By operation of the LIBOR Act and the Board's implementing regulation, all Board-selected benchmark replacements have ''historical fluctuations that are substantially similar to'' the LIBOR tenors they replace.[51] Thus, revised comment 40(f)(3)(ii)(B)–1.ii provides that the Board-selected benchmark replacement for consumer loans to the replace 1-month, 3-month, 6-month, and 12-month USD LIBOR index has historical fluctuations that are substantially similar to USD LIBOR tenor they are replacing. The Bureau's prior determination is obsolete. The ''spread-adjusted indices based on SOFR recommended by the ARRC for consumer products'' are the same as ''the Board-selected benchmark replacement for consumer loans'' and the LIBOR Act determined that the latter has historical fluctuations that are substantially similar to the LIBOR tenors they replace. Removing this obsolete determination will avoid confusion.

Fourth, to facilitate compliance, this interim final rule revises comment 40(f)(3)(ii)(B)–1 by specifying that the Board-selected benchmark replacements for consumer loans are an exception to the general requirement providing that the historical fluctuations considered when replacing a LIBOR index under a plan are the historical fluctuations up through the relevant date set forth in comment 40(f)(3)(ii)(B)–1. Accordingly, this interim final rule also revises comment 40(f)(3)(ii)(B)–1.ii to provide that no further determination is required that the Board-selected benchmark replacement for consumer loans meets the ''historical fluctuations are substantially similar'' standard. The changes to comment 40(f)(3)(ii)(B)–1 in relation to the Board-selected benchmark replacements for consumer loans do not alter or modify the Bureau's determination set forth in comment 40(f)(3)(ii)(B)–1.i in relation to the prime rate as the replacement index for the 1-month or 3-month USD LIBOR index, except to provide that no further determination is needed that the prime rate published in the Wall Street Journal meets this standard for these tenors. The CFPB solicits comments on these changes of the interim final rule.

Additional guidance on determining whether a replacement index has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) with respect to revised comment 40(f)(3)(ii)(A)–2.iii, the interim final rule makes similar changes to comment 40(f)(3)(ii)(B)–1.iii, which provides a non-exhaustive list of factors to be considered in whether a replacement index meets the Regulation Z ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index.

The CFPB is making two changes to comment 40(f)(3)(ii)(B)–1.iii. First, the CFPB is making a technical correction in comment 40(f)(3)(ii)(B)–1.iii to change ''substantial'' to ''substantially'' when considering the relevant factors in determining whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index. Second, similar to changes in revised comment 40(f)(3)(ii)(A)–2.iii above, the CFPB is revising comment 40(f)(3)(ii)(B)–1.iii by adding an exception for the Board-selected benchmark replacements for consumer loans, as defined in new § 1026.2(a)(28). When using the Board-selected benchmark replacements for consumer loans, a creditor need not consider the types of factors that have historical fluctuations substantially similar to those of a particular LIBOR index. Because the Board's final rule, in implementing the LIBOR Act, has determined that the Board-selected benchmark replacements for consumer loans are indices that have historical fluctuations that are substantially similar to their respective LIBOR tenors,

[49] *See* 85 FR 36938, 36972, 36994 (June 18, 2020) (proposing comment 59(f)–4 and noting the Bureau's 2020 notice of proposed rulemaking proposed and solicited comment on allowing use of a specific replacement formula where the index change involved the 1-year tenor in addition to the 1-month, 3-month, and 6-month tenors).

[50] 12 CFR 253.4(b)(2)(i)(B) and (ii)(B).

[51] LIBOR Act section 105(a)(5), 136 Stat. 830.

and the CFPB has determined in this interim final rule that this index meets the Regulation Z ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index, the factors need not be considered. While the CFPB had already applied the factors to the SOFR-based 1-month, 3-month, and 6-month LIBOR tenor replacement indices in its 2021 LIBOR Transition Final Rule, by operation of law, the factors need not be considered with respect to the Board-selected benchmark replacement for consumer loans for the 12-month LIBOR tenor in order for the index to satisfy Regulation Z's ''historical fluctuations are substantially similar'' standard. The CFPB solicits comments on these changes of the interim final rule.

Substantially similar rate. Pursuant to § 1026.40(f)(3)(ii)(B), if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

Comment 40(f)(3)(ii)(B)–3 also provides that for purposes of § 1026.40(f)(3)(ii)(B), if a creditor uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(B) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index.

For the same reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) above for revised comment 40(f)(3)(ii)(A)–3, the CFPB is making several changes to comment 40(f)(3)(ii)(B)–3. First, the CFPB is revising comment 40(f)(3)(ii)(B)–3 by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans.''

Second, the CFPB is expanding comment 40(f)(3)(ii)(B)–3 to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. This interim final rule revises comment 40(f)(3)(ii)(B)–3 to provide that the APR based on the replacement index is substantially similar to the rate based on the LIBOR index for purposes of § 1026.40(f)(3)(ii)(B) if a creditor uses the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(B) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index. Thus, a creditor that uses the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month USD LIBOR index as the replacement index still must comply with the condition in § 1026.40(f)(3)(ii)(B) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index, but the creditor will be deemed to be in compliance with this condition if the creditor uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The CFPB solicits comments on these changes in the interim final rule.

Section 1026.55 Limitations on Increasing Annual Percentage Rates, Fees, and Charges

55(b) Exceptions

55(b)(7) Index Replacement and Margin Change Exception

TILA section 171(a), which was added by the Credit CARD Act, provides that in the case of a credit card account under an open-end consumer credit plan, no creditor may increase any APR, fee, or finance charge applicable to any outstanding balance, except as permitted under TILA section 171(b).[52] TILA section 171(b)(2) provides that the prohibition under TILA section 171(a) does not apply to an increase in a variable APR in accordance with a credit card agreement that provides for changes in the rate according to the operation of an index that is not under the control of the creditor and is available to the general public.[53] In implementing these provisions of TILA section 171, § 1026.55(a) prohibits a card issuer from increasing an APR or certain enumerated fees or charges set forth in § 1026.55(a) on a credit card account under an open-end (not home-secured) consumer credit plan, except as provided in § 1026.55(b).

Section 1026.55(b)(7) provides a card issuer may increase an APR pursuant to certain exceptions. Section 1026.55(b)(7)(i) discusses the exception for index replacement and margin changes and provides that a card issuer may increase an APR when the card issuer changes the index and margin used to determine the APR if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the original index became unavailable. Section 1026.55(b)(7)(i) also provides if the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce a rate substantially similar to the rate in effect when the original index became unavailable.

Section 1026.55(b)(7)(ii) contains LIBOR-specific provisions that permit card issuers for a credit card account under an open-end (not home-secured) consumer credit plan that uses a LIBOR index under the plan for calculating variable rates to replace the LIBOR index and change the margins for calculating the variable rates on or after April 1, 2022, in certain circumstances. Comment 55(b)(7)–1 addresses the interaction among the unavailability provisions in § 1026.55(b)(7)(i), the LIBOR-specific provisions in § 1026.55(b)(7)(ii), and the contractual provisions applicable to the credit card account.

As discussed in more detail below in this section-by-section analysis, this interim final rule makes a number of changes to §§ 1026.55(b)(7)(i) and (b)(7)(ii) and the Official Interpretations below. In general, it: (1) replaces references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new defined term ''the Board-selected benchmark replacement for consumer

[52] 15 U.S.C. 1666i–1(a).

[53] 15 U.S.C. 1666i–1(b)(2).

loans''; (2) replaces the reference to the 1-year USD LIBOR index with the 12-month USD LIBOR index; (3) expands the Official Interpretations to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule; (4) provides that the Board-selected benchmark replacements for consumer loans to replace 1-month, 3-month, 6-month, and 12-month USD LIBOR indices have ''historical fluctuations that are substantially similar to'' the LIBOR tenors they replace; (5) provides if the creditor uses the Board-selected benchmark replacement for consumer loans, the creditor must use the index value of this index and the LIBOR index from a specified timeframe in determining whether the APR is substantially similar; and (6) explains when a card issuer that uses the Board-selected benchmark replacement for consumer loans satisfies the condition that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable or calculated using the LIBOR index.

Interaction among § 1026.55(b)(7)(i) and (ii) and contractual provisions. Comment 55(b)(7)–1 provides that a card issuer may use either the provision in § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) to replace a LIBOR index used under a credit card account under an open-end (not home-secured) consumer credit plan so long as the applicable conditions are met for the provision used. It provides examples illustrating when a card issuer may use these provisions. Each of these examples assumes that the LIBOR index used under the plan becomes unavailable after June 30, 2023. Specifically, comment 55(b)(7)–1.i provides an example where a contract for a credit card account under an open-end (not home-secured) consumer credit plan provides that a card issuer may not unilaterally replace an index under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an APR substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, comment 55(b)(7)–1.i explains that the card issuer may use the unavailability provisions in § 1026.55(b)(7)(i) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Comment 55(b)(7)–1.i also explains that the LIBOR-specific provisions in § 1026.55(b)(7)(ii) provide that a card issuer may replace the LIBOR index if the replacement index value in effect on October 18, 2021, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception provided under comment 55(b)(7)–1.i is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3) with respect to revised comment 40(f)(3)(ii)–1.i, this interim final rule makes similar changes to comment 55(b)(7)–1.i. The CFPB is revising the example in comment 55(b)(7)–1.i by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans'' to align terminology with the LIBOR Act and the Board's 2022 LIBOR Act Final Rule.

55(b)(7)(i)

Section 1026.55(b)(7)(i) contains an exception to the general rule in § 1026.55(a) restricting rate increases for index replacement and margin changes. Section 1026.55(b)(7)(i) provides that a card issuer may increase an APR when the card issuer changes the index and margin used to determine the APR if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the original index became unavailable. Section 1026.55(b)(7)(i) also provides that if the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce a rate substantially similar to the rate in effect when the original index became unavailable. Comment 55(b)(7)(i)–1 provides that for purposes of replacing a LIBOR index used under a plan pursuant to § 1026.55(b)(7)(i), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

The Board-selected benchmark replacements for consumer loans have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. Comment 55(b)(7)(i)–1.ii provides a determination by the Bureau that effective April 1, 2022, the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively. It provides that the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that the SOFR-based spread-adjusted index for consumer products and replacement margin will produce an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable in order to use this SOFR-based spread-adjusted index for consumer products as the replacement index for the applicable LIBOR index.

For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) with respect to revised comments 40(f)(3)(ii)(A)–2, –2.i, and –2.ii, the interim final rule makes similar changes to comments 55(b)(7)(i)–1, –1.i, and –1.ii. First, the CFPB is revising comment 55(b)(7)(i)–1.ii by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans.'' Revised comment 55(b)(7)(i)–1.ii includes a cross-reference to this definition. Based on these changes, revised comment 55(b)(7)(i)–1.ii provides that the card issuer also must comply with the condition in § 1026.55(b)(7)(i) requiring the Board-selected benchmark replacement for consumer loans and replacement margin result would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. The substantially similar standard for the APR is discussed in further detail below in relation to comment 55(b)(7)(i)–2.

Second, the CFPB is expanding comment 55(b)(7)(i)–1.ii to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. Comment 55(b)(7)(i)–1.ii does not discuss the 12-month (formerly called 1-year) USD LIBOR.[54] In the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for the 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 1-year USD LIBOR index in comment 55(b)(7)(i)–1.ii until it obtained additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. Section 105(a)(5) of the LIBOR Act provides that, for purposes of TILA and its implementing regulations, a Board-selected benchmark replacement and the selection or use of a Board-selected benchmark replacement as a benchmark replacement with respect to a LIBOR contract constitutes a replacement that has historical fluctuations that are substantially similar to those of the LIBOR index that it is replacing. The Board's regulation provides that for a LIBOR contract that is a consumer loan, the benchmark replacement shall be the corresponding 1-month, 3-month, 6-month, or 12-month CME Term SOFR plus the applicable amounts or tenor spread adjustment.[55] The CFPB is relying on the determination in the LIBOR Act and the Board's implementing regulation that the Board-selected benchmark replacements for consumer loans have historical fluctuations that are substantially similar to the USD LIBOR tenor that it is replacing. Thus, the CFPB is revising comment 55(b)(7)(i)–1.ii to also apply this determination of the historical fluctuations substantially similar standard to the replacement of the 12-month USD LIBOR index with the Board-selected benchmark replacement for consumer loans.

Third, based on the LIBOR Act and the Board's implementing regulation, the Bureau is removing its prior determination, that became effective April 1, 2022, concerning the spread-adjusted indices based on SOFR recommended by the ARRC for consumer products. By operation of the LIBOR Act and the Board's implementing regulation, all tenors of the Board-selected benchmark replacements have ''historical fluctuations that are substantially similar to'' the LIBOR tenors they replace.[56] Thus, revised comment 55(b)(7)(i)–1.ii provides that the Board-selected benchmark replacements for consumer loans to replace the 1-month, 3-month, 6-month, and 12-month USD LIBOR index has historical fluctuations that are substantially similar to USD LIBOR tenor they are replacing. The Bureau's prior determination is obsolete. The ''spread-adjusted indices based on SOFR recommended by the ARRC for consumer products'' are the same as ''the Board-selected benchmark replacement for consumer loans'' and the LIBOR Act determined that the latter has historical fluctuations that are substantially similar to the LIBOR tenors they replace. Removing this obsolete determination will avoid confusion.

Fourth, to facilitate compliance, this interim final rule revises comment 55(b)(7)(i)–1.ii by specifying that the Board-selected benchmark replacements for consumer loans are an exception to the requirement providing that the historical fluctuations considered when replacing a LIBOR index under a plan are the historical fluctuations up through the relevant date set forth in comment 55(b)(7)(i)–1.ii. Accordingly, this interim final rule also revises comment 55(b)(7)(i)–1.ii to provide that no further determination is required that the Board-selected benchmark replacements for consumer loans meets the ''historical fluctuations are substantially similar'' standard. The changes to comment 55(b)(7)(i)–1 in relation to the Board-selected benchmark replacements for consumer loans do not alter or modify the Bureau's determination set forth in comment 55(b)(7)(i)–1.i in relation to the prime rate as the replacement index for the 1-month or 3-month USD LIBOR index, except to provide that no further determination is needed that the prime rate published in the Wall Street Journal meets this standard for these tenors.

Additional guidance on determining whether a replacement index has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) with respect to revised comment 40(f)(3)(ii)(A)–2.iii, the interim final rule makes similar changes to comment 55(b)(7)(i)–1.iii, which provides a non-exhaustive list of factors to be considered in whether a replacement index meets the Regulation Z ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index.

The CFPB is making two changes to comment 55(b)(7)(i)–1.iii. First, the CFPB is making a technical correction in comment 55(b)(7)(i)–1.iii to change ''substantial'' to ''substantially'' when considering the relevant factors in determining whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index. Second, similar to changes in revised comment 40(f)(3)(ii)(A)–2.iii above, the CFPB is revising comment 55(b)(7)(i)–1.iii by adding an exception for the Board-selected benchmark replacements for consumer loans, as defined in new § 1026.2(a)(28). When using the Board-selected benchmark replacements for consumer loans, a creditor need not consider the types of factors that have historical fluctuations substantially similar to those of a particular LIBOR index. Because the Board's final rule, in implementing the LIBOR Act, has determined that the Board-selected benchmark replacements for consumer loans are indices that have historical fluctuations that are substantially similar to their respective LIBOR tenors, and the CFPB has determined in this interim final rule that this index meets the Regulation Z ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index, the factors need not be considered. While the CFPB had already applied the factors to the SOFR-based 1-month, 3-month, and 6-month LIBOR tenor replacement indices in its 2021 LIBOR Transition Final Rule, by operation of law, the factors need not be considered with respect to the Board-selected benchmark replacement for consumer loans for the 12-month LIBOR tenor in order for the index to satisfy Regulation Z's ''historical fluctuations are substantially similar'' standard. The CFPB solicits comments on these changes of the interim final rule.

[54] *See* 85 FR 36938, 36972, 36994 (June 18, 2020) (proposing comment 59(f)–4 and noting the Bureau's 2020 notice of proposed rulemaking proposed and solicited comment on allowing use of a specific replacement formula where the index change involved the 1-year tenor in addition to the 1-month, 3-month, and 6-month tenors).

[55] 12 CFR 253.4(b)(2)(i)(B) and (ii)(B).

[56] LIBOR Act section 105(a)(5), 136 Stat. 830.

Substantially similar rate when LIBOR becomes unavailable. Section 1026.55(b)(7)(i) provides that the replacement index and replacement margin must produce an APR substantially similar to the rate that was in effect based on the LIBOR index used under the plan when the LIBOR index became unavailable. Comment 55(b)(7)(i)–2 provides that, for comparing rates, a card issuer generally must use the value of the replacement index and the LIBOR index on the day that the LIBOR index becomes unavailable. It provides that if the replacement index is not published on the day that the LIBOR index becomes unavailable, the card issuer generally must use the previous calendar day that both indices are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception under comment 55(b)(7)(i)–2 is that, if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

Comment 55(b)(7)(i)–2 also provides that for purposes of § 1026.55(b)(7)(i), if a card issuer uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(i) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index.

For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(A) with respect to revised comment 40(f)(3)(ii)(A)–3, the interim final rule makes similar changes to comment 55(b)(7)(i)–2. First, the CFPB is revising comment 55(b)(7)(i)–2 by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans.''

Second, the CFPB is expanding comment 55(b)(7)(i)–2 to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. Comment 55(b)(7)(i)–2 does not discuss the 12-month (formerly called 1-year) USD LIBOR. In the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for the 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 1-year USD LIBOR index in comment 55(b)(7)(i)–2 until it obtains additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. Sections 105(a)(2), (a)(3), and (a)(5) of the LIBOR Act provide that, for purposes of TILA and its implementing regulations, a Board-selected benchmark replacement and the selection or use of a Board-selected benchmark replacement as a benchmark replacement with respect to a LIBOR contract constitutes a ''comparable index'' and ''has historical fluctuations that are substantially similar'' to those of the USD LIBOR index they are replacing. The Board's regulation provides that for a LIBOR contract that is a consumer loan, the benchmark replacement shall be the corresponding 1-month, 3-month, 6-month, or 12-month CME Term SOFR plus the applicable amounts or tenor spread adjustment.[57] The determination in the LIBOR Act and the Board's implementing regulation applies not only to the Board-selected benchmark replacements for consumer loans that are replacing the 1-month, 3-month, and 6-month USD LIBOR, but also to the Board-selected benchmark replacement for consumer loans that is replacing the 12-month tenor of LIBOR. Thus, the CFPB is revising comment 55(b)(7)(i)–2 to provide that for purposes of § 1026.55(b)(7)(i), if a card issuer uses the Board-selected benchmark replacements for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(i) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate in effect at the time the LIBOR index became unavailable. The CFPB solicits comment on these changes of the interim final rule.

55(b)(7)(ii)

Section 1026.55(b)(7)(ii) contains LIBOR-specific provisions that permit card issuers for a credit card account under an open-end (not home-secured) consumer credit plan that uses a LIBOR index under the plan for calculating variable rates to replace the LIBOR index and change the margins for calculating the variable rates on or after April 1, 2022, in certain circumstances. The CFPB explained in the 2021 LIBOR Transition Final Rule how, as a practical matter, § 1026.55(b)(7)(ii) allows card issuers to provide the 45-day change-in-terms notices required under § 1026.9(c)(2) prior to the LIBOR indices becoming unavailable, and thus allows those card issuers to avoid being left without a LIBOR index to use in calculating the variable rate before the replacement index and margin become effective. Also, § 1026.55(b)(7)(ii) allows card issuers to provide the change-in-terms notices, and replace the LIBOR index used under the plans, on accounts on a rolling basis, rather than having to provide the change-in-terms notices, and replace the LIBOR index, for all its accounts at the same time as the LIBOR index used under the plan becomes unavailable. The CFPB believes that this advance notice of the replacement index and any change in the margin is important to consumers to inform them of how variable rates will be determined going forward after the LIBOR index is replaced.

Section 1026.55(b)(7)(ii) provides that if a variable rate on a credit card account under an open-end (not home-secured) consumer credit plan is calculated using a LIBOR index, a card issuer may replace the LIBOR index and change the margin for calculating the variable rate on or after April 1, 2022, as long as: (1) the historical fluctuations in the LIBOR index and replacement index were substantially similar; and (2) the replacement index value in effect on October 18, 2021, and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on

[57] 12 CFR 253.4(b)(2)(i)(B) and (ii)(B).

October 18, 2021, and the replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Section 1026.55(b)(7)(ii) also provides that if the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. As set forth in § 1026.55(b)(7)(ii), the one exception is that if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index. Comment 55(b)(7)(ii)–1 provides detail on determining whether a replacement index that is not newly established has historical fluctuations that are substantially similar to those of the LIBOR index used under the plan for purposes of § 1026.55(b)(7)(ii). It provides that for purposes of replacing a LIBOR index used under a plan pursuant to § 1026.55(b)(7)(ii), a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination by the Bureau. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the card issuer makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar.

For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(B), the interim final rule is making two changes to § 1026.55(b)(7)(ii). First, the CFPB is revising § 1026.55(b)(7)(ii) by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans.'' Second, the CFPB is using the term 12-month tenor instead of 1-year tenor with respect to the USD LIBOR index.

The Board-selected benchmark replacements for consumer loans have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. Comment 55(b)(7)(ii)–1.ii provides a determination by the Bureau that, effective April 1, 2022, the SOFR-based spread-adjusted indices recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively. The Bureau made this determination in case some card issuers choose to replace a LIBOR index with the SOFR-based spread-adjusted index recommended by the ARRC for consumer products. Comment 55(b)(7)(ii)–1.ii also provides that in order to use this SOFR-based spread-adjusted index recommended by the ARRC for consumer products discussed above as the replacement index for the applicable LIBOR index, the card issuer also must satisfy the condition in § 1026.55(b)(7)(ii) that the SOFR-based spread-adjusted index for consumer products and replacement margin will produce an APR substantially similar to the rate calculated using the LIBOR index and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Comment 55(b)(7)(ii)–1.ii provides that because of the exception in § 1026.55(b)(7)(ii), the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index recommended by the ARRC for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(B) with respect to revised comments 40(f)(3)(ii)(B)–1, –1.i, and –1.ii and discussed below, the interim final rule makes similar changes to comments 55(b)(7)(ii)–1, –1.i, and –1.ii. First, the CFPB is replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans.'' Revised comment 55(b)(7)(ii)–1.ii includes a cross-reference to this definition. Based on these changes, revised comment 55(b)(7)(ii)–1.ii provides that the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) requiring the Board-selected benchmark replacement for consumer loans and replacement margin to produce an APR substantially similar to the rate calculated using the LIBOR index and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The substantially similar standard for this interim final rule is discussed in further detail below in relation to comment 55(b)(7)(ii)–3.

Second, the CFPB is expanding comment 55(b)(7)(ii)–1.ii to include a replacement index for the 12-month USD LIBOR not previously addressed in the 2021 LIBOR Transition Final Rule. Comment 55(b)(7)(ii)–1.ii does not discuss the 12-month (formerly called 1-year) USD LIBOR.[58] In the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for the 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 1-year USD LIBOR index in comment 55(b)(7)(ii)–1.ii until it obtained additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. Section 105(a)(5) of the LIBOR Act provides that, for purposes of TILA and its implementing regulations, a Board-selected benchmark replacement and the selection or use of a Board-selected benchmark replacement as a benchmark replacement with respect to a LIBOR contract constitutes a replacement that has historical fluctuations that are substantially similar to those of the LIBOR index that it is replacing. The Board's regulation provides that for a LIBOR contract that is a consumer loan, the benchmark replacement shall be the corresponding 1-month, 3-month, 6-

[58] *See* 85 FR 36938, 36972, 36994 (June 18, 2020) (proposing comment 59(f)–4 and noting the Bureau's 2020 notice of proposed rulemaking proposed and solicited comment on allowing use of a specific replacement formula where the index change involved the 1-year tenor in addition to the 1-month, 3-month, and 6-month tenors).

month, or 12-month CME Term SOFR plus the applicable amounts or tenor spread adjustment.[59] The CFPB is relying on the determination in the LIBOR Act and the Board's implementing regulation that the Board-selected benchmark replacements for consumer loans have historical fluctuations that are substantially similar to the USD LIBOR tenor that they are replacing. Thus, the CFPB is revising comment 55(b)(7)(ii)–1.ii to also apply this determination of the historical fluctuations substantially similar standard to the replacement of the 12-month USD LIBOR index with the Board-selected benchmark replacement for consumer loans.

Third, based on the LIBOR Act and the Board's implementing regulation, the Bureau is removing its prior determination, that became effective April 1, 2022, concerning the spread-adjusted indices based on SOFR recommended by the ARRC for consumer products. By operation of the LIBOR Act and the Board's implementing regulation, all tenors of the Board-selected benchmark replacements have ''historical fluctuations that are substantially similar to'' the LIBOR tenors they replace.[60] Thus, revised comment 55(b)(7)(ii)–1.ii provides that the Board-selected benchmark replacements for consumer loans to replace the 1-month, 3-month, 6-month, and 12-month USD LIBOR index has historical fluctuations that are substantially similar to USD LIBOR tenor they are replacing. The Bureau's prior determination is obsolete. The ''spread-adjusted indices based on SOFR recommended by the ARRC for consumer products'' are the same as ''the Board-selected benchmark replacement for consumer loans'' and the LIBOR Act determined that the latter has historical fluctuations that are substantially similar to the LIBOR tenors they replace. Removing this obsolete determination will avoid confusion.

Fourth, to facilitate compliance, this interim final rule revises comment 55(b)(7)(ii)–1 by specifying that the Board-selected benchmark replacements for consumer loans are an exception to the requirement providing that the historical fluctuations considered when replacing a LIBOR index under a plan are the historical fluctuations up through the relevant date set forth in comment 55(b)(7)(ii)–1.ii. Accordingly, this interim final rule also revises comment 55(b)(7)(ii)–1.ii to provide that no further determination is required to determine that the Board-selected benchmark replacements for consumer loans meet the ''historical fluctuations are substantially similar'' standard. The changes to comment 55(b)(7)(ii)–1 in relation to the Board-selected benchmark replacements for consumer loans do not alter or modify the Bureau's determination set forth in comment 55(b)(7)(ii)–1.i in relation to the prime rate as the replacement index for the 1-month or 3-month USD LIBOR index, except to provide that no further determination is needed that the prime rate published in the Wall Street Journal meets this standard for these tenors. The CFPB solicits comments on these changes of the interim final rule.

Additional guidance on determining whether a replacement index has historical fluctuations that are substantially similar to those of certain USD LIBOR indices. For the same reasons as discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(B) with respect to revised comment 40(f)(3)(ii)(B)–1.iii, the interim final rule makes similar changes to comment 55(b)(7)(ii)–1.iii, which provides a non-exhaustive list of factors to be considered in whether a replacement index meets the Regulation Z ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index.

The CFPB is making two changes to comment 55(b)(7)(ii)–1.iii. First, the CFPB is making a technical correction in comment 55(b)(7)(ii)–1.iii to change ''substantial'' to ''substantially'' when considering the relevant factors in determining whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index. Second, similar to changes in revised comment 40(f)(3)(ii)(B)–1.iii above, the CFPB is revising comment 55(b)(7)(ii)–1.iii by adding an exception for the Board-selected benchmark replacements for consumer loans, as defined in new § 1026.2(a)(28). When using the Board-selected benchmark replacement for consumers loans, a creditor need not consider the types of factors that have historical fluctuations substantially similar to those of a particular LIBOR index. Because the Board's final rule, in implementing the LIBOR Act, has determined that the Board-selected benchmark replacements for consumer loans are indices that have historical fluctuations that are substantially similar to their respective LIBOR tenors, and the CFPB has determined in this interim final rule that this index meets the Regulation Z ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index, the factors need not be considered. While the CFPB had already applied the factors to the SOFR-based 1-month, 3-month, and 6-month LIBOR tenor replacement indices in its 2021 LIBOR Transition Final Rule, by operation of law, the factors need not be considered with respect to the Board-selected benchmark replacement for consumer loans for the 12-month LIBOR tenor in order for the index to satisfy Regulation Z's ''historical fluctuations are substantially similar'' standard. The CFPB solicits comments on these changes of the interim final rule.

Substantially similar rate. Pursuant to § 1026.55(b)(7)(ii), if the replacement index is the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the APR based on the replacement index is substantially similar to the rate based on the LIBOR index.

Comment 55(b)(7)(ii)–3 also provides for purposes of § 1026.55(b)(7)(ii), if a card issuer uses the SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD index as the replacement index and uses as the replacement margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(ii) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index.

For the same reasons discussed in the section-by-section analysis of § 1026.40(f)(3)(ii)(B) above for revised comment 40(f)(3)(ii)(B)–3, this interim final rule implements a number of changes to comment 55(b)(7)(ii)–3. First, the CFPB is revising comment 55(b)(7)(ii)–3 by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term ''the Board-selected benchmark replacement for consumer loans.''

Second, the CFPB is expanding comment 55(b)(7)(ii)–3 to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. This interim final rule revises comment 55(b)(7)(ii)–3 to provide that for purposes of

[59] 12 CFR 253.4(b)(2)(i)(B) and (ii)(B).

[60] LIBOR Act section 105(a)(5), 136 Stat. 830.

§ 1026.55(b)(7)(ii), if a card issuer uses the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month USD LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(ii) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index. Thus, a card issuer that uses the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month USD LIBOR index as the replacement index still must comply with the condition in § 1026.55(b)(7)(ii) that the replacement index and replacement margin would have resulted in an APR substantially similar to the rate calculated using the LIBOR index, but the card issuer will be deemed to be in compliance with this condition if the card issuer uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The CFPB solicits comments on these changes in the interim final rule.

Section 1026.59 Reevaluation of Rate Increases

59(f) Termination of the Obligation To Review Factors

59(f)(3)

TILA section 148, which was added by the Credit CARD Act of 2009,[61] provides that if a creditor increases the APR applicable to a credit card account under an open-end consumer credit plan, based on factors including the credit risk of the obligor, market conditions, or other factors, the creditor shall consider changes in such factors in subsequently determining whether to reduce the APR for such obligor.[62] Section 1026.59 implements this provision. The provisions in § 1026.59 generally apply to card issuers that increase an APR applicable to a credit card account, based on the credit risk of the consumer, market conditions, or other factors. For any rate increase imposed on or after January 1, 2009, card issuers generally are required to review the account no less frequently than once each six months and, if appropriate based on that review, reduce the APR.

Section 1026.59(f) provides that this obligation to review the rate increase ceases to apply if the card issuer reduces the APR to a rate equal to or less than the rate applicable immediately prior to the increase, or if the rate applicable immediately prior to the increase was a variable rate, to a rate determined by the same index and margin (previous formula) that applied prior to the increase. Once LIBOR is discontinued, it will not be possible for card issuers to use the ''same index.'' As discussed in the CFPB's 2021 LIBOR Transition Final Rule, because the discontinuation of LIBOR means that after discontinuation, the card issuer will not have a LIBOR index for use in the ''previous formula'' to determine the rate that applied prior to the increase, the existing methods to terminate the obligation to review would not apply.

Section 1026.59(f)(3) provides, effective April 1, 2022, a replacement formula that card issuers can use to terminate the obligation to review factors under § 1026.59(a) when the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index. Section 1026.59(f)(3) applies to situations in which a LIBOR index is used as the index in the ''previous formula'' (*i.e.,* the formula used to determine the rate at which the obligation to review factors ceases).[63] Under § 1026.59(f)(3), the replacement formula, which includes the replacement index on October 18, 2021, plus replacement margin, must equal the LIBOR index value on October 18, 2021, plus the margin used to calculate the rate immediately prior to the increase.[64] Section 1026.59(f)(3) also provides that a card issuer must satisfy the conditions set forth in § 1026.55(b)(7)(ii) for selecting a replacement index. Under § 1026.59(f)(3), if the replacement index is not published on October 18, 2021, the card issuer generally must use the values of the indices on the next calendar day for which both the LIBOR index and the replacement index are published as the index values to use to determine the replacement formula. The one exception in § 1026.59(f)(3) is that if the replacement index is the spread-adjusted index based on SOFR recommended by the ARRC for consumer products to replace the 1-month, 3-month, 6-month, or 1-year USD LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, as the index values to use to determine the replacement formula.

Additionally, comment 59(f)–4 provides methods for identifying the replacement index to be used in the formula by providing instructions for determining the relevant date through which the card issuer must determine that historical fluctuations between the indices are substantially similar. Comment 59(f)–4 provides that if the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination, but if the Bureau has not made such a determination, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the card issuer makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar. Comment 59(f)–4 states the Bureau's determination that the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month USD LIBOR indices and that the spread-adjusted indices based on SOFR recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month USD LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month USD LIBOR indices respectively.

For the reasons discussed below, and as discussed in the section-by-section analysis of § 1026.59(f)(3) and comment 59(f)–4 below, this interim final rule implements several revisions related to rate reevaluation provisions. First, as discussed in more detail in the section-by-section analysis for § 1026.55(b)(7) above, and for the reasons discussed therein, the CFPB is revising § 1026.59(f)(3) by replacing references to the spread-adjusted index based on SOFR recommended by the ARRC for consumer products with the new term

[61] Public Law 111–24, 123 Stat. 1734 (2009).

[62] 15 U.S.C. 1665c.

[63] Section 1026.59(f)(3) does not apply to rate increases that may result from the switch from a LIBOR index to another index under § 1026.55(b)(7)(i) or § 1026.55(b)(7)(ii) as those potential rate increases will be excepted from the provisions of § 1026.59. Section 1026.59(f)(3) does, however, cover rate increases that were already subject to the provisions of § 1026.59 and that use a formula under § 1026.59(f) based on a LIBOR index to determine whether to terminate the review obligations under § 1026.59.

[64] For purposes of § 1026.59(f)(3) ''replacement index,'' as defined in comment 59(f)–4, refers to the index used in the replacement formula, which identifies the value for benchmark comparison to determine if the obligation to conduct rate reevaluations terminates.

''the Board-selected benchmark replacement for consumer loans'' to align terminology in the rule with the LIBOR Act and the Board's 2022 LIBOR Act Final Rule. As discussed in the section-by-section analysis for § 1026.2(a)(28), this interim final rule also defines the term ''the Board-selected benchmark replacement for consumer loans.'' Revised comment 59(f)–4 includes a cross-reference to that definition. As discussed above, these terms identify the same index, and the change is merely for consistency with the Act and ease of reading.

Second, the CFPB is expanding comment 59(f)–4 to include a replacement index for the 12-month USD LIBOR, which was not previously addressed in the 2021 LIBOR Transition Final Rule. Comment 59(f)–4 does not discuss the 12-month (formerly called 1-year) USD LIBOR.[65] In the 2021 LIBOR Transition Final Rule, the CFPB generally provided examples of SOFR-based replacement indices for the 1-month, 3-month, and 6-month tenors of USD LIBOR, but reserved judgment about whether to include a reference to the 1-year USD LIBOR index in comment 59(f)–4 until it obtained additional information. Since the CFPB promulgated the 2021 LIBOR Transition Final Rule, the LIBOR Act was enacted, and the Board issued its final rule implementing the Act. Section 105(a)(5) of the LIBOR Act provides that, for purposes of TILA and its implementing regulations, a Board-selected benchmark replacement and the selection or use of a Board-selected benchmark replacement as a benchmark replacement with respect to a LIBOR contract constitutes a replacement that has historical fluctuations that are substantially similar to those of the LIBOR index that it is replacing. The Board's regulation provides that for a LIBOR contract that is a consumer loan, the benchmark replacement shall be the corresponding 1-month, 3-month, 6-month, or 12-month CME Term SOFR plus the applicable amounts or tenor spread adjustment.[66] The CFPB is relying on the determination in the LIBOR Act and the Board's implementing regulation that the Board-selected benchmark replacements for consumer loans have historical fluctuations that are substantially similar to the USD LIBOR tenor that they are replacing. While section 104(f) of the LIBOR Act provides that nothing in the Act ''may be construed to alter or impair— . . . (5) any provision of Federal consumer financial law that— (A) . . . govern the reevaluation of rate increases on credit card accounts under open-end (not home-secured) consumer credit plans,'' [67] the CFPB is not relying on the LIBOR Act for its authority to provide an alternative method for determining whether the card issuer can terminate its obligation under the credit card account rate reevaluation requirements where the rate applicable immediately prior to a rate increase was a variable rate calculated using a LIBOR index. Instead, the CFPB is revising § 1026.59(f)(3) and comment 59(f)–4 pursuant to its authority to implement TILA section 148, as discussed above.

Third, based on the LIBOR Act and the Board's implementing regulation, the Bureau is removing its prior determination, that became effective April 1, 2022, concerning the spread-adjusted indices based on SOFR recommended by the ARRC for consumer products. By operation of the LIBOR Act and the Board's implementing regulation, all tenors of the Board-selected benchmark replacements for consumer loans have ''historical fluctuations that are substantially similar to'' the LIBOR tenors they replace.[68] Thus, the CFPB is revising comment 59(f)–4 to provide that the Board-selected benchmark replacements for consumer loans to replace the 1-month, 3-month, 6-month, and 12-month USD LIBOR index have historical fluctuations that are substantially similar to USD LIBOR tenor they are replacing. The Bureau's prior determination is obsolete. The ''spread-adjusted indices based on SOFR recommended by the ARRC for consumer products'' are the same as ''the Board-selected benchmark replacement for consumer loans'' and the LIBOR Act determined that the latter has historical fluctuations that are substantially similar to the LIBOR tenors they replace. Removing this obsolete determination will avoid confusion.

Fourth, to facilitate compliance, this interim final rule revises comment 59(f)–4 by specifying that the Board-selected benchmark replacements for consumer loans are an exception to the requirement providing that the historical fluctuations considered when replacing a LIBOR index under a plan are the historical fluctuations up through the relevant date as set forth in comment 59(f)–4. Accordingly, this interim final rule also revises comment 59(f)–4 to provide that no further determination is required that the Board-selected benchmark replacement for consumer loans meets the ''historical fluctuations are substantially similar'' standard. The changes to comment 59(f)–4 in relation to the Board-selected benchmark replacements for consumer loans do not alter or modify the Bureau's determination set forth in comment 59(f)–4 in relation to the prime rate as the replacement index for the 1-month or 3-month USD LIBOR index, except to provide that no further determination is needed that the prime rate published in the Wall Street Journal meets this standard for these tenors. The CFPB solicits comments on these changes in the interim final rule.

VI. Effective Date

The final rule will take effect on May 15, 2023, which should be approximately 45 days before the expected discontinuation of LIBOR.

VII. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

In developing the interim final rule, the CFPB has considered the interim final rule's potential benefits, costs, and impacts.[69] The CFPB requests comment on the analysis presented below as well as submissions of additional data that could inform the CFPB's analysis of the benefits, costs, and impacts. In developing the interim final rule, the CFPB has consulted with, or offered to consult with, the appropriate prudential regulators and other Federal agencies regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The CFPB is issuing an interim final rule amending Regulation Z, which implements TILA, to reflect the enactment of the LIBOR Act and its implementing regulation promulgated by the Board. This interim final rule further addresses the planned cessation of most USD LIBOR tenors after June 30, 2023, by incorporating the Board-

[65] *See* 85 FR 36938, 36972, 36994 (June 18, 2020) (proposing comment 59(f)–4 and noting the Bureau's 2020 notice of proposed rulemaking proposed and solicited comment on allowing use of a specific replacement formula where the index change involved the 1-year tenor in addition to the 1-month, 3-month, and 6-month tenors).

[66] 12 CFR 253.4(b)(2)(i)(B) and (ii)(B).

[67] LIBOR Act section 104(f), 136 Stat. 829.

[68] LIBOR Act section 105(a)(5), 136 Stat. 830.

[69] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act requires the Bureau to consider the potential benefits and costs of the regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products and services; the impact of proposed rules on insured depository institutions and insured credit unions with less than $10 billion in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. The applicability of section 1022(b)(2)(A) to this rulemaking is unclear, but the Bureau has performed the described analysis.

selected benchmark replacements for consumer loans into Regulation Z. This interim final rule conforms the terminology from the LIBOR Act and the Board's implementing regulation into relevant Regulation Z open-end and closed-end credit provisions and also addresses treatment of the 12-month USD LIBOR index and its replacement index, including permitting creditors to use alternative language in change-in-terms notice content requirements for situations where the 12-month tenor of the LIBOR index is being replaced consistent with the LIBOR Act.

The CFPB is making four categories of amendments to various provisions in Regulation Z to make changes consistent with the LIBOR Act to address the anticipated sunset of LIBOR.

First, (the ''terminology amendments'') the CFPB is changing the terminology used in the CFPB's 2021 LIBOR Transition Final Rule to make it consistent with terminology in the LIBOR Act. Specifically, for both-open and closed-end credit as discussed in further detail below, the CFPB is replacing all references to the ''index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products'' with references to the ''the Board-selected benchmark replacement for consumer loans'' and adding a new definition for that term in the Official Interpretations. The CFPB is also replacing all references to the ''1-year'' USD LIBOR with references to the ''12-month'' USD LIBOR.

Second, (''12-month historical fluctuations amendments'') for both open- and closed-end credit, the CFPB is revising the Official Interpretations to incorporate the Board-selected benchmark replacement for consumer loans to replace the 12-month LIBOR, as prescribed by the LIBOR Act, as an index that has historical fluctuations that are substantially similar to those of the 12-month USD LIBOR index it is intended to replace. The Bureau's prior determination that the spread-adjusted indices based on SOFR recommended by the ARRC to replace 1-month, 3-month, and 6-month USD LIBOR have historical fluctuations that are substantially similar to the indices they are intended to replace is obsolete, given that the Board-selected benchmark replacement for consumer loans to replace 1-month, 3-month, and 6-month USD LIBOR indices is the same as the corresponding spread-adjusted index based on SOFR recommended by the ARRC.

Third, (''12-month LIBOR notice requirements amendments'') the CFPB is adding the Board-selected benchmark replacement for consumer loans that would replace the 12-month USD LIBOR index to the list of indices where a creditor is allowed to use an alternative method to disclose information about the periodic rate and APR in change-in-terms notices for HELOCs and credit card accounts as a result of the replacement of the LIBOR index in certain circumstances.

Fourth, (''12-month LIBOR rate reevaluation amendments'') the CFPB is adding the Board-selected benchmark replacement for consumer loans that would replace the 12-month USD LIBOR index to the list of indices where a card issuer is allowed to use an alternative method for determining whether the card issuer can terminate its obligation under the credit card account rate reevaluation requirements where the rate applicable immediately prior to a rate increase was a variable rate calculated using a LIBOR index. The Bureau also deleted its prior determination in the Official Interpretations that the spread-adjusted indices based on SOFR recommended by the ARRC to replace 1-month, 3-month, and 6-month USD LIBOR have historical fluctuations that are substantially similar to the indices they are intended to replace, given that ''the Board-selected benchmark replacement for consumer loans'' to replace 1-month, 3-month, and 6-month USD LIBOR indices is the same as the corresponding spread-adjusted index based on SOFR recommended by the ARRC for consumer products.

B. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion below relies on information that the CFPB has obtained from industry, other regulatory agencies, and publicly available sources. The data are generally limited with which to quantify the potential costs, benefits, and impacts of the final provisions.

In light of these data limitations, the analysis below generally provides a qualitative discussion of the benefits, costs, and impacts of the final provisions. General economic principles and the CFPB's expertise in consumer financial markets, together with the limited data that are available, provide insight into these benefits, costs, and impacts.

C. Baseline for Analysis

In evaluating the potential benefits, costs, and impacts of the interim final rule, the CFPB takes as a baseline the current legal framework regarding the LIBOR transition. Therefore, the baseline for the analysis of the interim final rule includes the amendments to Regulation Z in the CFPB's 2021 LIBOR Transition Final Rule, the LIBOR Act, and the Board's implementing regulation as law.

When finalized, the rule will affect the market as described below as long as it is in effect. However, with or without the interim final rule, the transfer from LIBOR would be complete by June 30, 2023, when LIBOR is set to expire. Therefore, the analysis below of the benefits, costs, and impacts of the interim final rule applies mostly to the period between May 15, 2023 (when the interim final rule takes effect) and June 30, 2023 (when LIBOR is set to expire).

D. Potential Benefits and Costs of the Interim Final Rule to Consumers and Covered Persons

Reliable data on the indices credit products are linked to are not generally available, so the CFPB cannot estimate the dollar value of debt tied to LIBOR in the distinct credit markets that will be impacted by this interim final rule. However, the ARRC has estimated that in 2021 there was $1.3 trillion of mortgage debt and $100 billion of non-mortgage debt tied to LIBOR.[70]

1. ''Terminology Amendments''

For clarity, the CFPB is replacing references to the index based on ''SOFR recommended by the Alternative Reference Rates Committee for consumer products'' with references to the ''the Board-selected benchmark replacement for consumer loans.''

The CFPB believes that, even absent these amendments, nearly all creditors would likely correctly construe the term ''SOFR recommended by the Alternative References Rate Committee for consumer products'' to mean the ''the Board-selected benchmark replacement for consumer loans.'' Therefore, the CFPB believes that, in the vast majority of cases, the amendments will not change the indices creditors would switch to, the timing of those changes, or the disclosures they provide to consumers. Therefore, the amendments will impose very few costs on consumers or firms. The amendments will provide some benefits to firms and consumers by decreasing uncertainty.

2. ''12-Month Historical Fluctuations'' Amendments

For both open- and closed-end credit, the CFPB is including the Board-selected benchmark replacement for consumer loans to replace 12-month LIBOR, as prescribed by the LIBOR Act,

[70] Alt. Reference Rates Comm., *Progress Report: The Transition from U.S. Dollar LIBOR* (Mar. 2021), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/USD-LIBOR-transition-progress-report-mar-21.pdf.*

as an index that has historical fluctuations that are substantially similar to those of the 12-month USD LIBOR index it is intended to replace.

Under both the interim final rule and the baseline, the LIBOR Act and the Board's implementing regulation determine that the Board-selected benchmark replacement for consumer loans to replace 12-month LIBOR has historical fluctuations that are substantially similar to those of the 12-month USD LIBOR index it is intended to replace. Therefore, by operation of law, the amendments to Regulation Z by this interim final rule will not change whether the Board-selected benchmark replacement for consumer loans to replace 12-month LIBOR has historical fluctuations that are substantially similar to those of the 12-month USD LIBOR index it is intended to replace. Hence these amendments will impose very few costs on consumers or firms. The amendments will provide some benefits to firms and consumers by decreasing uncertainty.

3. ''12-Month LIBOR Notice Requirements'' Amendments

These amendments by the interim final rule will add the Board-selected benchmark replacement for consumer loans for 12-month USD LIBOR, in addition to those Board-selected benchmark replacements for consumer loans for 1-month, 3-month, and 6-month USD LIBOR, as another circumstance where creditors may follow comments 9(c)(1)–4 (for HELOCs) and 9(c)(2)(iv)–2.ii (for credit cards) for how to disclose information about the periodic rate and APR in a change-in-terms notice for HELOCs and credit cards, assuming the other conditions in the comment are met.

Without these amendments, it is not clear how creditors could provide required change-in-terms notices to switch consumers from the 12-month USD LIBOR index to the Board-selected benchmark replacement for consumer loans to replace 12-month USD LIBOR index, prior to the publication of the Board-selected benchmark replacement for consumer loans to replace 12-month USD LIBOR index. Therefore, it is not clear what creditors would do under the baseline absent these amendments.

Some creditors may be legally required to switch consumers to the Board-selected benchmark replacements for consumer loans. Presumably, they would still do so even absent these amendments, although they might face significant legal uncertainty and experience significant legal costs by doing so. They might face this legal uncertainty if they decide to send out the change-in-terms notice prior to the Board-selected benchmark replacements for consumer loans being published. Alternatively, if they decide not to send out the change-in-terms notice until after the Board-selected benchmark replacements for consumer loans are published, they might face legal uncertainty in how to calculate the rate after the LIBOR index is discontinued, but prior to the Board-selected benchmark replacements for consumer loans becoming effective on the account.

Other creditors could choose under the baseline to switch to the Board-selected benchmark replacements for consumer loans even if not required to do so. For these creditors, these amendments would decrease costs by providing additional clarity and certainty about the required change-in-terms notices. These amendments will likely also decrease litigation costs for these creditors after the transition from 12-month LIBOR to the Board-selected benchmark replacement for consumer loans.

Consumers with loans from these creditors would have their loans switched from 12-month LIBOR to the Board-selected benchmark replacement for consumer loans both under these amendments and under the baseline. The CFPB expects that, under these amendments and under the baseline, these consumers would receive similar change-in-terms notices with only minimal adjustments to the content of those notices. Hence, the CFPB estimates that these amendments will have no significant benefits, costs, or impacts for these consumers.

It is possible that there may be creditors that would switch to the Board-selected benchmark replacements for consumer loans under these amendments that might be deterred by existing change-in-terms notice requirements from switching consumers to the Board-selected benchmark replacement for consumer loans without this amendment. Therefore, without this amendment these creditors would choose different indices to replace LIBOR indices. Because these creditors would prefer to switch to the Board-selected benchmark replacement for consumer loans and this provision will allow them to do so, the CFPB expects that this provision would generate substantial benefits for these creditors. However, based on its market intelligence, the CFPB believes there to be very few such creditors, if any, as market participants have informed the CFPB that other factors will dominate the determination about which index to switch to. The CFPB expects that, based partly on a final rule promulgated by the U.S. Department of Housing and Urban Development (HUD),[71] most Home Equity Conversion Mortgages (HECMs) will transition to one of the Board-selected benchmark replacement for consumer loans under this interim final rule and under the baseline. The CFPB expects that most non-HECM HELOCS and credit cards will switch to the Prime rate under this interim final rule and under the baseline, because most HELOC creditors and credit card issuers prefer to have their portfolio based on a single index and they have portfolios that are already mostly linked to the Prime rate.

Under these amendments, consumers with loans from these creditors will have their loans switched to the Board-selected benchmark replacement for consumer loans. Under the baseline, consumers with loans from these creditors would have their loans switched to other indices. Therefore, after the transition, these consumers' APRs will be tied to the Board-selected benchmark replacement for consumer loans, while under the baseline they would be tied to other indices. Because these other replacement indices creditors would switch to are not identical to the Board-selected benchmark replacement for consumer loans, they will not move identically to the Board-selected benchmark replacement for consumer loans, so affected consumers' payments would be different under the provision than they would be under the baseline. On some dates in which indexed rates reset, some replacement indices may have increased relative to the Board-selected benchmark replacement for consumer loans. Consumers with these indices would then pay a cost due to this provision until the next rate reset. On some dates in which indexed rates reset, some replacement indices may have decreased relative to the Board-selected benchmark replacement for consumer loans. Consumers with these indices would then benefit from this provision until the next rate reset. Consumers vary in their constraints and preferences, the credit products they have, the dates those credit products reset, the replacement indices their creditors would choose, and the transition dates their creditors will choose. The benefits and costs that will accrue to consumers from this provision and that arise because of differences in index movements will vary across consumers and over time. However, the CFPB expects ex-ante for these benefits and costs to be small on average, because the rates creditors switch to must be

[71] *See* 88 FR 12822 (Mar. 1, 2023).

substantially similar to existing LIBOR-based rates generally using index values in effect on October 18, 2021, and because replacement indices that are not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index. As discussed above, the CFPB also expects for these benefits and costs to small because the CFPB believes there will likely be few, if any, loans that transition to different indices because of the interim final rule.

4. ''12-Month LIBOR Rate Reevaluation Amendments''

The CFPB is amending § 1026.59(f)(3) and comment 59(f)–4 to conform to the LIBOR Act and the Board's implementing regulation. Specifically, revised comment 59(f)–4 provides that the Board-selected benchmark replacements for consumer loans to replace 1-month, 3-month, 6-month, and 12-month USD LIBOR index have historical fluctuations that are substantially similar to those of the USD LIBOR tenors they are replacing. Section 105(a)(5) of the LIBOR Act provides that, for purposes of TILA and its implementing regulations, a Board-selected benchmark replacement and the selection or use of a Board-selected benchmark replacement as a benchmark replacement with respect to a LIBOR contract constitutes a replacement that has historical fluctuations that are substantially similar to those of the LIBOR index that it is replacing. The Board's regulation provides that for a LIBOR contract that is a consumer loan, the benchmark replacement shall be the corresponding 1-month, 3-month, 6-month, or 12-month CME Term SOFR plus the applicable amounts or tenor spread adjustment. The CFPB is relying on the determination in the LIBOR Act and the Board's implementing regulation that the Board-selected benchmark replacement for consumer loans has historical fluctuations that are substantially similar to the USD LIBOR tenor that it is replacing.

The determination in the LIBOR Act and the Board's implementing regulation that the Board-selected benchmark replacement for consumer loans has historical fluctuations that are substantially similar to the USD LIBOR tenor that it is replacing applies not only to the Board-selected benchmark replacements for consumer loans that are replacing the 1-month, 3-month, and 6-month USD LIBOR, but also to the Board-selected benchmark replacement for consumer loans that is replacing the 12-month tenor of LIBOR. Accordingly, the Board-selected benchmark replacement for consumer loans to replace the 12-month USD LIBOR tenor has historical fluctuations that are substantially similar to the 12-month USD LIBOR tenor for purposes of complying with § 1026.59(f)(3) and comment 59(f)–4. The Bureau also found that its prior determination in relation to the use of SOFR-based spread-adjusted index recommended by the ARRC for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices is obsolete given that ''the Board-selected benchmark replacement for consumer loans'' to replace 1-month, 3-month, and 6-month USD LIBOR indices is the same as the corresponding spread-adjusted index based on SOFR recommended by the ARRC for consumer products to replace the 1-month, 3-month, and 6-month U.S. Dollar LIBOR indices.

The LIBOR Act and the Board's implementing regulation would be effective even under the baseline. By operation of the LIBOR Act, all tenors of the Board-selected benchmark replacements for consumer loans have historical fluctuations that are substantially similar to the LIBOR tenors they replace. Therefore, even without these amendments, creditors would likely conclude that the Board-selected benchmark replacement for consumer loans has historical fluctuations that are substantially similar to 12-month USD LIBOR for purposes of § 1026.59(f)(3) and comment 59(f)–4. Therefore, the amendments will likely not impose any significant costs or benefits on consumers. The amendments will likely provide some benefits to creditors by reducing regulatory uncertainty and compliance burden.

E. Potential Specific Impacts of This Interim Final Rule

1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

The CFPB believes that the consideration of benefits and costs of covered persons presented above provides a largely accurate analysis of the impacts of the interim final rule on depository institutions and credit unions with $10 billion or less in total assets that issue credit products that are tied to LIBOR and are covered by these final provisions.

2. Impact of This Interim Final Rule on Consumer Access to Credit and on Consumers in Rural Areas

Because this interim final rule will affect only existing accounts that are tied to LIBOR and would generally not affect new loans, this interim final rule will not directly impact consumer access to credit. While this interim final rule will provide some benefits and costs to creditors and card issuers in connection to the transition away from LIBOR, it is unlikely to affect the costs of providing new credit and therefore the CFPB believes that any impact on creditors and card issuers from this interim final rule is not likely to have a significant impact on consumer access to credit.

Consumers in rural areas may experience benefits or costs from this interim final rule that are larger or smaller than the benefits and costs experienced by consumers in general if credit products in rural areas are more or less likely to be linked to LIBOR than credit products in other areas. The CFPB does not have any data or other information to understand whether this is the case. The CFPB requests comment regarding the impact of the amended provisions on consumers in rural areas and how those impacts may differ from those experienced by consumers generally.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not require an initial or final regulatory flexibility analysis in a rulemaking where a general notice of proposed rulemaking is not required.[72] As noted previously, the CFPB has determined that it is unnecessary to publish a general notice of proposed rulemaking for this interim final rule. As an additional basis, the CFPB's Director certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities, and so an initial or final regulatory flexibility analysis is also not required for that reason.[73] The rule will not impose significant costs on creditors, including small entities, for the reasons discussed in the section 1022(b) analysis.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[74] Federal agencies are generally required to seek the Office of Management and Budget's (OMB's) approval for information collection requirements prior to implementation. The collections of information related to Regulation Z have been previously reviewed and approved by OMB and assigned OMB Control number 3170–0015. Under the PRA, the CFPB may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond

[72] 5 U.S.C. 603(a), 604(a).

[73] 5 U.S.C. 605(b).

to an information collection unless the information collection displays a valid control number assigned by OMB.

The CFPB has determined that this interim final rule would not impose any new or revised information collection requirements (recordkeeping, reporting or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA.

The CFPB has a continuing interest in the public's opinions regarding this determination. At any time, comments regarding this determination may be sent to: Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, or by email to *CFPB_Public_PRA@cfpb.gov.*

XI. Congressional Review Act

Pursuant to the Congressional Review Act,[75] the CFPB will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2). As discussed in part IV, the CFPB finds that there is good cause for the rule to take effect without prior notice and comment. Accordingly, this rule may take effect at such time as the CFPB determines. 5 U.S.C. 808(2).

List of Subjects in 12 CFR Part 1026

Advertising, Banks, banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau revises Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart A—General

■ 2. Amend § 1026.2 by adding paragraph (a)(28) to read as follows:

§ 1026.2 Definitions and rules of construction

(a) * * *

(28) *The Board-selected benchmark replacement for consumer loans* means the SOFR-based index selected by the Board of Governors of the Federal Reserve System to replace, as applicable, the 1-month, 3-month, 6-month, or 12-month tenor of U.S. Dollar LIBOR, as set forth in the Board of Governors of the Federal Reserve System's regulation at 12 CFR part 253, which implements the Adjustable Interest Rate (LIBOR) Act, Public Law 117–103, division U.

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 3. Amend § 1026.40 by revising paragraph (f)(3)(ii)(B) to read as follows:

§ 1026.40 Requirements for home equity plans.

* * * * *

(f) * * *

(3) * * *

(ii) * * *

(B) If a variable rate on the plan is calculated using a LIBOR index, change the LIBOR index and the margin for calculating the variable rate on or after April 1, 2022, to a replacement index and a replacement margin, as long as historical fluctuations in the LIBOR index and replacement index were substantially similar, and as long as the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on October 18, 2021, and the replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the Board-selected benchmark replacement for consumer loans, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index.

* * * * *

Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

■ 4. Amend § 1026.55 by revising paragraph (b)(7)(ii) to read as follows:

§ 1026.55 Limitations on increasing annual percentage rates, fees, and charges.

* * * * *

(b) * * *

(7) * * *

(ii) If a variable rate on the plan is calculated using a LIBOR index, the card issuer changes the LIBOR index and the margin for calculating the variable rate on or after April 1, 2022, to a replacement index and a replacement margin, as long as historical fluctuations in the LIBOR index and replacement index were substantially similar, and as long as the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on October 18, 2021, and the replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether

[75] 5 U.S.C. 801 *et seq.*

the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the Board-selected benchmark replacement for consumer loans, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index.

* * * * *

■ 5. Amend § 1026.59 by revising paragraph (f)(3) to read as follows:

§ 1026.59 Reevaluation of rate increases.

* * * * *

(f) * * *

(3) Effective April 1, 2022, in the case where the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index, the card issuer reduces the annual percentage rate to a rate determined by a replacement formula that is derived from a replacement index value on October 18, 2021, plus replacement margin that is equal to the LIBOR index value on October 18, 2021, plus the margin used to calculate the rate immediately prior to the increase (previous formula). A card issuer must satisfy the conditions set forth in § 1026.55(b)(7)(ii) for selecting a replacement index. If the replacement index is not published on October 18, 2021, the card issuer generally must use the values of the indices on the next calendar day for which both the LIBOR index and the replacement index are published as the index values to use to determine the replacement formula. The one exception is that if the replacement index is the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the Board-selected benchmark replacement for consumer loans, must use the index value on the first date that index is published, as the index values to use to determine the replacement formula.

* * * * *

■ 6. In Supplement I to part 1026:

■ a. Under *Section 1026.9—Subsequent Disclosure Requirements,* revise *9(c)(1) Rules Affecting Home-Equity Plans,* and *9(c)(2)(iv) Disclosure Requirements.*

■ b. Under *Section 1026.20—Disclosure Requirements Regarding Post-Consummation Events,* revise *20(a) Refinancings.*

■ c. Under *Section 1026.40—Requirements for Home-Equity Plans,* revise *Paragraph 40(f)(3)(ii), Paragraph 40(f)(3)(ii)(A),* and *Paragraph 40(f)(3)(ii)(B).*

■ d. Under *Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges,* revise *55(b)(7) Index replacement and margin change exception, Paragraph 55(b)(7)(i),* and *Paragraph 55(b)(7)(ii).*

■ e. Under *Section 1026.59—Reevaluation of Rate Increases,* revise *59(f) Termination of Obligation to Review Factors.*

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.9—Subsequent Disclosure Requirements

* * * * *

9(c)(1) Rules Affecting Home-Equity Plans

1. *Changes initially disclosed.* No notice of a change in terms need be given if the specific change is set forth initially, such as: rate increases under a properly disclosed variable rate plan, a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment, or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum. The rules in § 1026.40(f) relating to home-equity plans limit the ability of a creditor to change the terms of such plans.

2. *State law issues.* Examples of issues not addressed by § 1026.9(c) because they are controlled by state or other applicable law include:

i. The types of changes a creditor may make. (*But see* § 1026.40(f).)

ii. How changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change either affects any of the terms required to be disclosed under § 1026.6(a) or increases the minimum payment, unless an exception under § 1026.9(c)(1)(ii) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 25-day grace period on purchases and the consumer will have fewer days during the billing cycle change.

4. *Changing index for calculating a variable rate from LIBOR to the Board-selected benchmark replacement for consumer loans in specified circumstances.* If a creditor is replacing a LIBOR index with the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index, the creditor is not changing the margin used to calculate the variable rate as a result of the replacement, and a periodic rate or the corresponding annual percentage rate based on the replacement index is unknown to the creditor at the time the change-in-terms notice is provided because the Board-selected benchmark replacement for consumer loans has not been published at the time the creditor provides the change-in-terms notice but will be published by the time the replacement of the index takes effect on the account, the creditor may comply with any requirement to disclose the amount of the new rate (as calculated using the new index), or a change in the periodic rate or the corresponding annual percentage rate (as calculated using the replacement index), based on the best information reasonably available, clearly stating that the disclosure is an estimate. For example, in this situation, the creditor may state that: (1) information about the rate is not yet available but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and (2) the rate will vary with the market based on a SOFR index. *See* § 1026.2(a)(28) for the definition of *the Board-selected benchmark replacement for consumer loans.*

* * * * *

9(c)(2)(iv) Disclosure Requirements

1. *Changing margin for calculating a variable rate.* If a creditor is changing a margin used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new margin) in the table described in § 1026.9(c)(2)(iv), and include a reminder that the rate is a variable rate. For example, if a creditor is changing the margin for a variable rate that uses the prime rate as an index, the creditor must disclose in the table the new rate (as calculated using the new margin) and indicate that the rate varies with the market based on the prime rate.

2. *Changing index for calculating a variable rate.* i. *In general.* If a creditor is changing the index used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and how the rate is determined, as explained in § 1026.6(b)(2)(i)(A). For example, if a creditor is changing from using a LIBOR index to using a prime index in calculating a variable rate, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on a prime index.

ii. *Changing index for calculating a variable rate from LIBOR to the Board-selected benchmark replacement for consumer loans in specified circumstances.* If a creditor is replacing a LIBOR index with the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index, the creditor is not changing the margin used to calculate the variable rate as a result of the replacement, and a periodic rate or the corresponding annual percentage rate based on the replacement index is unknown to the creditor at the time the change-in-terms notice is provided because the Board-selected benchmark replacement for consumer loans has not been published at the time the creditor provides the change-in-terms notice, but will be published by the time the replacement of the index takes effect on the account, the creditor may comply with any requirement to disclose the amount of the new rate (as calculated using the new index), or a change in the periodic rate or the corresponding annual percentage rate (as calculated using the replacement index), based on the best information reasonably available, clearly stating that the disclosure is an estimate. For example, in this situation, the creditor may state that: (1) information about the rate is not yet available but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and (2) the rate will vary with the market based on a SOFR index. *See* § 1026.2(a)(28) for the definition of *the Board-selected benchmark replacement for consumer loans.*

3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor generally must provide a notice as otherwise required under § 1026.9(c) even if the variable rate at the time of the change is higher than the non-variable rate. However, a creditor is not required to provide a notice under § 1026.9(c) if the creditor provides the disclosures required by § 1026.9(c)(2)(v)(B) or (c)(2)(v)(D) in connection with changing a variable rate to a lower nonvariable rate. Similarly, a creditor is not required to provide a notice under § 1026.9(c) when changing a variable rate to a lower non-variable rate in order to comply with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation. Finally, a creditor is not required to provide a notice under § 1026.9(c) when changing a variable rate to a lower non-variable rate in order to comply with § 1026.55(b)(4).

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor generally must provide a notice as otherwise required under § 1026.9(c) even if the non-variable rate is higher than the variable rate at the time of the change. However, a creditor is not required to provide a notice under § 1026.9(c) if the creditor provides the disclosures required by § 1026.9(c)(2)(v)(B) or (c)(2)(v)(D) in connection with changing a non-variable rate to a lower variable rate. Similarly, a creditor is not required to provide a notice under § 1026.9(c) when changing a non-variable rate to a lower variable rate in order to comply with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation. Finally, a creditor is not required to provide a notice under § 1026.9(c) when changing a non-variable rate to a lower variable rate in order to comply with § 1026.55(b)(4). *See* comment 55(b)(2)–4 regarding the limitations in § 1026.55(b)(2) on changing the rate that applies to a protected balance from a non-variable rate to a variable rate.

5. *Changes in the penalty rate, the triggers for the penalty rate, or how long the penalty rate applies.* If a creditor is changing the amount of the penalty rate, the creditor must also redisclose the triggers for the penalty rate and the information about how long the penalty rate applies even if those terms are not changing. Likewise, if a creditor is changing the triggers for the penalty rate, the creditor must redisclose the amount of the penalty rate and information about how long the penalty rate applies. If a creditor is changing how long the penalty rate applies, the creditor must redisclose the amount of the penalty rate and the triggers for the penalty rate, even if they are not changing.

6. *Changes in fees.* If a creditor is changing part of how a fee that is disclosed in a tabular format under § 1026.6(b)(1) and (2) is determined, the creditor must redisclose all relevant information related to that fee regardless of whether this other information is changing. For example, if a creditor currently charges a cash advance fee of ''Either $5 or 3% of the transaction amount, whichever is greater (Max: $100),'' and the creditor is only changing the minimum dollar amount from $5 to $10, the issuer must redisclose the other information related to how the fee is determined. For example, the creditor in this example would disclose the following: ''Either $10 or 3% of the transaction amount, whichever is greater (Max: $100).''

7. *Combining a notice described in § 1026.9(c)(2)(iv) with a notice described in § 1026.9(g)(3).* If a creditor is required to provide a notice described in § 1026.9(c)(2)(iv) and a notice described in § 1026.9(g)(3) to a consumer, the creditor may combine the two notices. This would occur if penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

8. *Content.* Sample G–20 contains an example of how to comply with the requirements in § 1026.9(c)(2)(iv) when a variable rate is being changed to a non-variable rate on a credit card account. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. Sample G–21 contains an example of how to comply with the requirements in § 1026.9(c)(2)(iv) when the late payment fee on a credit card account is being increased, and the returned payment fee is also being increased. The sample discloses the consumer's right to reject the changes in accordance with § 1026.9(h).

9. *Clear and conspicuous standard. See* comment 5(a)(1)–1 for the clear and conspicuous standard applicable to disclosures required under § 1026.9(c)(2)(iv)(A)(*1*).

10. *Terminology. See* § 1026.5(a)(2) for terminology requirements applicable to disclosures required under § 1026.9(c)(2)(iv)(A)(*1*).

11. *Reasons for increase.* i. *In general.* Section 1026.9(c)(2)(iv)(A)(8) requires card issuers to disclose the principal reason(s) for increasing an annual percentage rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan. The regulation does not mandate a minimum number of reasons that must be disclosed. However, the specific reasons disclosed under § 1026.9(c)(2)(iv)(A)(*8*) are required to relate to and accurately describe the principal factors actually considered by the card issuer in increasing the rate. A card issuer may describe the reasons for the increase in general terms. For example, the notice of a rate increase triggered by a decrease of 100 points in a consumer's credit score may state that the increase is due to ''a decline in your creditworthiness '' or ''a decline in your credit score.'' Similarly, a notice of a rate increase triggered by a 10% increase in the card issuer's cost of funds may be disclosed as ''a change in market conditions.'' In some circumstances, it may be appropriate for a card issuer to combine the disclosure of several reasons in one statement. However, § 1026.9(c)(2)(iv)(A)(*8*) requires that the notice specifically disclose any violation of the terms of the account on which the rate is being increased, such as a late payment or a returned payment, if such violation of the account terms is one of the four principal reasons for the rate increase.

ii. *Example.* Assume that a consumer made a late payment on the credit card account on which the rate increase is being imposed, made a late payment on a credit card account with another card issuer, and the consumer's credit score decreased, in part due to such late payments. The card issuer may disclose the reasons for the rate increase as a decline in the consumer's credit score and the consumer's late payment on the account subject to the increase. Because the late payment on the credit card account with the other issuer also likely contributed to the decline in the consumer's credit score, it is not required to be separately disclosed. However, the late payment on the credit card account on which the rate increase is being imposed must be specifically disclosed even if that late payment also contributed to the decline in the consumer's credit score.

* * * * *

Section 1026.20—Disclosure Requirements Regarding Post-Consummation Events

20(a) Refinancings

1. *Definition.* A refinancing is a new transaction requiring a complete new set of disclosures. Whether a refinancing has occurred is determined by reference to whether the original obligation has been satisfied or extinguished and replaced by a new obligation, based on the parties' contract and applicable law. The refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer or on the consumer's behalf, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the prior one.

i. Changes in the terms of an existing obligation, such as the deferral of individual installments, will not constitute a refinancing unless accomplished by the cancellation of that obligation and the substitution of a new obligation.

ii. A substitution of agreements that meets the refinancing definition will require new disclosures, even if the substitution does not substantially alter the prior credit terms.

2. *Exceptions.* A transaction is subject to § 1026.20(a) only if it meets the general definition of a refinancing. Section 1026.20(a)(1) through (5) lists 5 events that are not treated as refinancings, even if they are accomplished by cancellation of the old obligation and substitution of a new one.

3. *Variable-rate.* i. If a variable-rate feature was properly disclosed under the regulation, a rate change in accord with those disclosures is not a refinancing. For example, no new disclosures are required when the variable-rate feature is invoked on a renewable balloon-payment mortgage that was previously disclosed as a variable-rate transaction.

ii. Even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the creditor either:

A. Increases the rate based on a variable-rate feature that was not previously disclosed; or

B. Adds a variable-rate feature to the obligation. A creditor does not add a variable-rate feature by changing the index of a variable-rate transaction to a comparable index, whether the change replaces the existing index or substitutes an index for one that no longer exists. For example, a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction from the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index to the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index respectively because the replacement index is a comparable index to the corresponding U.S. Dollar LIBOR index. *See* § 1026.2(a)(28) for the definition of *the Board-selected benchmark replacement for consumer loans. See* comment 20(a)–3.iv for factors to be used in determining whether a replacement index is comparable to a particular LIBOR index.

iii. If either of the events in paragraph 20(a)–3.ii.A or ii.B occurs in a transaction secured by a principal dwelling with a term longer than one year, the disclosures required under § 1026.19(b) also must be given at that time.

iv. Except for the Board-selected benchmark replacement for consumer loans as defined in § 1026.2(a)(28), the relevant factors to be considered in determining whether a replacement index is comparable to a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.,* historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index could meet the ''comparable'' standard with respect to a particular LIBOR index using historical data or future expectations, include but are not limited to, whether: (1) the movements over time are comparable; (2) the consumers' payments using the replacement index compared to payments using the LIBOR index are comparable if there is sufficient data for this analysis; (3) the index levels are comparable; (4) the replacement index is publicly available; and (5) the replacement index is outside the control of the creditor. The Board-selected benchmark replacement for consumer loans is considered comparable with respect to the LIBOR tenor being replaced, and therefore, these factors need not be considered.

4. *Unearned finance charge.* In a transaction involving precomputed finance charges, the creditor must include in the finance charge on the refinanced obligation any unearned portion of the original finance charge that is not rebated to the consumer or credited against the underlying obligation. For example, in a transaction with an add-on finance charge, a creditor advances new money to a consumer in a fashion that extinguishes the original obligation and replaces it with a new one. The creditor neither refunds the unearned finance charge on the original obligation to the consumer nor credits it to the remaining balance on the old obligation. Under these circumstances, the unearned finance charge must be included in the finance charge on the new obligation and reflected in the annual percentage rate disclosed on refinancing. Accrued but unpaid finance charges are included in the amount financed in the new obligation.

5. *Coverage.* Section 1026.20(a) applies only to refinancings undertaken by the original creditor or a holder or servicer of the original obligation. A ''refinancing'' by any other person is a new transaction under the regulation, not a refinancing under this section.

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Section 1026.40—Requirements for Home-Equity Plans

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Paragraph 40(f)(3)(ii)

1. Replacing LIBOR. A creditor may use either the provision in § 1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B) to replace a LIBOR index used under a plan so long as the applicable conditions are met for the provision used. Neither provision, however, excuses the creditor from noncompliance with contractual provisions. The following examples illustrate when a creditor may use the provisions in § 1026.40(f)(3)(ii)(A) or (B) to replace the LIBOR index used under a plan.

i. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the creditor may use § 1026.40(f)(3)(ii)(A) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Section 1026.40(f)(3)(ii)(B) provides that a creditor may replace the LIBOR index if, among other conditions, the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the Board-selected benchmark replacement for consumer loans, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. *See* § 1026.2(a)(28) for the definition of *the Board-selected benchmark replacement for consumer loans.* In this example, however, the creditor would be contractually prohibited from replacing the LIBOR index used under the plan unless the replacement index and replacement margin also will produce an annual percentage rate substantially similar to a rate that is in effect when the LIBOR index becomes unavailable.

ii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable but does not require that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the creditor would be contractually prohibited from unilaterally replacing a LIBOR index used under the plan until it becomes unavailable. At that time, the creditor has the option of using § 1026.40(f)(3)(ii)(A) or (B) to replace the LIBOR index if the conditions of the applicable provision are met.

iii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a creditor may change the terms of the contract (including the index) as permitted by law. In this case, if the creditor replaces a LIBOR index under a plan on or after April 1, 2022, but does not wait until the LIBOR index becomes unavailable to do so, the creditor may only use § 1026.40(f)(3)(ii)(B) to replace the LIBOR index if the conditions of that provision are met. In this case, the creditor may not use § 1026.40(f)(3)(ii)(A). If the creditor waits until the LIBOR index used under the plan becomes unavailable to replace the LIBOR index, the creditor has the option of using § 1026.40(f)(3)(ii)(A) or (B) to replace the LIBOR index if the conditions of the applicable provision are met.

Paragraph 40(f)(3)(ii)(A)

1. *Substitution of index.* A creditor may change the index and margin used under the plan if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce a rate substantially similar to the rate in effect when the original index became unavailable.

2. *Replacing LIBOR.* For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan. Except for the Board-selected benchmark replacement for consumer loans defined in § 1026.2(a)(28), the historical fluctuations considered are the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices, and no further determination is required. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that the prime rate and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. *See also* comment 40(f)(3)(ii)(A)–3.

ii. By operation of the Adjustable Interest Rate (LIBOR) Act, Public Law 117–103, division U, and the Board's implementing regulation, 12 CFR part 253, the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index has historical fluctuations substantially similar to those of the LIBOR index being replaced. *See* § 1026.2(a)(28) for the definition of *the Board-selected benchmark replacement for consumer loans.* As a result, the Board-selected benchmark replacement for consumer loans meets the ''historical fluctuations are substantially similar'' standard for the LIBOR index tenor it replaces, and no further determination is required. In order to use the Board-selected benchmark replacement for consumer loans as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(A) that the Board-selected benchmark replacement for consumer loans and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. *See also* comment 40(f)(3)(ii)(A)–3.

iii. Except for the Board-selected benchmark replacement for consumer loans as defined in § 1026.2(a)(28), the relevant factors to be considered in determining whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.,* historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: (1) the movements over time are substantially similar; and (2) the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis. The Board-selected benchmark replacement for consumer loans is considered to meet the ''historical fluctuations are substantially similar'' standard with respect to the LIBOR tenor being replaced, and therefore, these factors need not be considered.

3. *Substantially similar rate when LIBOR becomes unavailable.* Under § 1026.40(f)(3)(ii)(A), the replacement index and replacement margin must produce an annual percentage rate substantially similar to the rate that was in effect based on the LIBOR index used under the plan when the LIBOR index became unavailable. For this comparison of the rates, a creditor generally must use the value of the replacement index and the LIBOR index on the day that LIBOR becomes unavailable. If the replacement index is not published on the day that the LIBOR index becomes unavailable, the creditor generally must use the previous calendar day that both indices are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the Board-selected benchmark replacement for consumer loans, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of § 1026.40(f)(3)(ii)(A), if a creditor uses the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(A) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under a plan becomes unavailable on June 30, 2023, and on that day the LIBOR index value is 2%, the margin is 10%, and the annual percentage rate is 12%. Also, assume that a creditor has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on June 30, 2023. The creditor would satisfy the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12% on June 30, 2023.) Thus, if the creditor provides a change-in-terms notice under § 1026.9(c)(1) on July 1, 2023, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on July 17, 2023, the creditor satisfies the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable. This is true even if the prime index value changes after June 30, 2023, and the annual percentage rate calculated using the prime index value and 7% margin on July 17, 2022, is not substantially similar to the rate calculated using the LIBOR index value on June 30, 2023.

Paragraph 40(f)(3)(ii)(B)

1. *Replacing LIBOR.* For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan. Except for the Board-selected benchmark replacement for consumer loans as defined in § 1026.2(a)(28), the historical fluctuations considered are the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the

relevant date is the date indicated in that determination. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the creditor makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices, and no further determination is required. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(B) that the prime rate index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. *See also* comments 40(f)(3)(ii)(B)–2 and –3.

ii. By operation of the Adjustable Interest Rate (LIBOR) Act, Public Law 117–103, division U, and the Board's implementing regulation, 12 CFR part 253, the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index has historical fluctuations substantially similar to those of the LIBOR index being replaced. *See* § 1026.2(a)(28) for the definition of *the Board-selected benchmark replacement for consumer loans.* As a result, the Board-selected benchmark replacement for consumer loans meets the ''historical fluctuations are substantially similar'' standard for the LIBOR index it replaces, and no further determination is required. In order to use the Board-selected benchmark replacement for consumer loans as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in § 1026.40(f)(3)(ii)(B) that the Board-selected benchmark replacement for consumer loans and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Because of the exception in § 1026.40(f)(3)(ii)(B), the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the Board-selected benchmark replacement for consumer loans, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. *See also* comments 40(f)(3)(ii)(B)–2 and –3.

iii. Except for the Board-selected benchmark replacement for consumer loans as defined in § 1026.2(a)(28), the relevant factors to be considered in determining whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.,* historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: (1) the movements over time are substantially similar; and (2) the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis. The Board-selected benchmark replacement for consumer loans is considered to meet the ''historical fluctuations are substantially similar'' standard with respect to the LIBOR tenor being replaced, and therefore, these factors need not be considered.

2. *Using index values on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.* Under § 1026.40(f)(3)(ii)(B), if the replacement index was published on October 18, 2021, the replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the creditor provides the change-in-terms notice disclosing the replacement index for the variable rate. The following example illustrates this comment.

i. Assume a variable rate used under the plan that is based on the 1-month U.S. Dollar LIBOR index and assume that LIBOR becomes unavailable after June 30, 2023. On October 18, 2021, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume on January 1, 2022, a creditor provides a change-in-terms notice under § 1026.9(c)(1) disclosing a new margin of 12% for the variable rate pursuant to a written agreement under § 1026.40(f)(3)(iii), and this change in the margin becomes effective on January 1, 2022, pursuant to § 1026.9(c)(1). Assume that there are no more changes in the margin that is used in calculating the variable rate prior to April 1, 2022, the date on which the creditor provides a change-in-terms notice under § 1026.9(c)(1), disclosing the replacement index and replacement margin for the variable rate that will be effective on April 17, 2022. In this case, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 12%. Assume that the creditor has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A replacement margin of 9% is permissible under § 1026.40(f)(3)(ii)(B) because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 14%, which is substantially similar to the 14% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan (which is 12%).

3. *Substantially similar rates using index values on October 18, 2021.* Under § 1026.40(f)(3)(ii)(B), if the replacement index was published on October 18, 2021, the replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of § 1026.40(f)(3)(ii)(B), if a creditor uses the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in § 1026.40(f)(3)(ii)(B) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate calculated using the LIBOR index. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under the plan has a value of 2% on October 18, 2021, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 10%, and the annual percentage rate based on that LIBOR index value and that margin is 12%. Also, assume that the creditor has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A creditor would satisfy the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, by selecting a 7%

replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12%.) Thus, if the creditor provides a change-in-terms notice under § 1026.9(c)(1) on April 1, 2022, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on April 17, 2022, the creditor satisfies the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This is true even if the prime index value or the LIBOR index value changes after October 18, 2021, and the annual percentage rate calculated using the prime index value and 7% margin on April 17, 2022, is not substantially similar to the rate calculated using the LIBOR index value on October 18, 2021, or substantially similar to the rate calculated using the LIBOR index value on April 17, 2022.

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Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges

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55(b)(7) Index Replacement and Margin Change Exception

1. *Replacing LIBOR.* A card issuer may use either the provision in § 1026.55(b)(7)(i) or (ii) to replace a LIBOR index used under the plan so long as the applicable conditions are met for the provision used. Neither provision, however, excuses the card issuer from noncompliance with contractual provisions. The following examples illustrate when a card issuer may use the provisions in § 1026.55(b)(7)(i) or (ii) to replace a LIBOR index on the plan.

i. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a card issuer may not replace an index unilaterally under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. The card issuer may use § 1026.55(b)(7)(i) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Section 1026.55(b)(7)(ii) provides that a card issuer may replace the LIBOR index if, among other conditions, the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the Board-selected benchmark replacement for consumer loans, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. In this example, however, the card issuer would be contractually prohibited from replacing the LIBOR index used under the plan unless the replacement index and replacement margin also will produce an annual percentage rate substantially similar to a rate that is in effect when the LIBOR index becomes unavailable.

ii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a card issuer may not replace an index unilaterally under a plan unless the original index becomes unavailable but does not require that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the card issuer would be contractually prohibited from unilaterally replacing the LIBOR index used under the plan until it becomes unavailable. At that time, the card issuer has the option of using § 1026.55(b)(7)(i) or (ii) to replace the LIBOR index used under the plan if the conditions of the applicable provision are met.

iii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a card issuer may change the terms of the contract (including the index) as permitted by law. In this case, if the card issuer replaces the LIBOR index used under the plan on or after April 1, 2022, but does not wait until the LIBOR index becomes unavailable to do so, the card issuer may only use § 1026.55(b)(7)(ii) to replace the LIBOR index if the conditions of that provision are met. In that case, the card issuer may not use § 1026.55(b)(7)(i). If the card issuer waits until the LIBOR index used under the plan becomes unavailable to replace LIBOR, the card issuer has the option of using § 1026.55(b)(7)(i) or (ii) to replace the LIBOR index if the conditions of the applicable provisions are met.

Paragraph 55(b)(7)(i)

1. *Replacing LIBOR.* For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan. Except for the Board-selected benchmark replacement for consumer loans as defined in § 1026.2(a)(28), the historical fluctuations considered are the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices, and no further determination is required. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that the prime rate and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the LIBOR index became unavailable. *See also* comment 55(b)(7)(i)–2.

ii. By operation of the Adjustable Interest Rate (LIBOR) Act, Public Law 117–103, division U, codified at 12 U.S.C. 5803(e)(2), and the Board's implementing regulation, 12 CFR 253.4(b)(2), the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index has historical fluctuations substantially similar to those of the LIBOR index being replaced. *See* § 1026.2(a)(28) for the definition of *the Board-selected benchmark replacement for consumer loans.* As a result, the Board-selected benchmark replacement for consumer loans meets the ''historical fluctuations are substantially similar'' standard for the LIBOR index it replaces, and no further determination is required. In order to use the Board-selected benchmark replacement for consumer loans as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(i) that the Board-selected benchmark replacement for consumer loans and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the LIBOR index became unavailable. *See also* comment 55(b)(7)(i)–2.

iii. Except for the Board-selected benchmark replacement for consumer loans as defined in § 1026.2(a)(28), the relevant factors to be considered in determining whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.,* historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: (1) the movements over time are substantially similar; and (2) the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis. The Board-selected benchmark replacement for consumer loans is considered to meet the ''historical fluctuations are substantially similar'' standard with respect to the LIBOR tenor being replaced, and therefore, these factors need not be considered.

2. *Substantially similar rate when LIBOR becomes unavailable.* Under § 1026.55(b)(7)(i), the replacement index and replacement margin must produce an annual percentage rate substantially similar to the rate that was in effect at the time the LIBOR index used under the plan became unavailable. For this comparison of the rates, a card issuer generally must use the value of the replacement index and the LIBOR index on the day that LIBOR becomes unavailable. If the replacement index is not published on the day that the LIBOR index becomes unavailable, the card issuer generally must use the previous calendar day that both indices are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the Board-selected benchmark replacement for consumer loans, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of § 1026.55(b)(7)(i), if a card issuer uses the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(i) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under the plan becomes unavailable on June 30, 2023, and on that day the LIBOR value is 2%, the margin is 10%, and the annual percentage rate is 12%. Also, assume that a card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on June 30, 2023. The card issuer would satisfy the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12% on June 30, 2023.) Thus, if the card issuer provides a change-in-terms notice under § 1026.9(c)(2) on July 1, 2023, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on August 16, 2023, the card issuer satisfies the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable. This is true even if the prime index value changes after June 30, 2023, and the annual percentage rate calculated using the prime index value and 7% margin on August 16, 2023, is not substantially similar to the rate calculated using the LIBOR index value on June 30, 2023.

Paragraph 55(b)(7)(ii)

1. *Replacing LIBOR.* For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan. Except for the Board-selected benchmark replacement for consumer loans as defined in § 1026.2(a)(28), the historical fluctuations considered are the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the card issuer makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices, and no further determination is required. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) that the prime rate index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. *See also* comments 55(b)(7)(ii)–2 and –3.

ii. By operation of the Adjustable Interest Rate (LIBOR) Act, Public Law 117–103, division U and the Board's implementing regulation, 12 CFR part 253, the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index has historical fluctuations substantially similar to those of the LIBOR index being replaced. *See* § 1026.2(a)(28) for the definition of *the Board-selected benchmark replacement for consumer loans.* As a result, the Board-selected benchmark replacement for consumer loans meets the ''historical fluctuations are substantially similar'' standard for the LIBOR index it replaces, and no further determination is required. In order to use the Board-selected benchmark replacement for consumer loans as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in § 1026.55(b)(7)(ii) that the Board-selected benchmark replacement for consumers loans and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Because of the exception in § 1026.55(b)(7)(ii), the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the Board-selected benchmark replacement for consumer loans, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. *See also* comments 55(b)(7)(ii)–2 and –3.

iii. Except for the Board-selected benchmark replacement for consumer loans as defined in § 1026.2(a)(28), the relevant factors to be considered in determining whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.,* historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: (1) the movements over time are substantially similar; and (2) the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis. The Board-selected benchmark replacement for consumer loans is considered to meet the ''historical fluctuations are substantially similar'' standard with respect to the LIBOR tenor being replaced, and therefore, these factors need not be considered.

2. *Using index values on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.* Under § 1026.55(b)(7)(ii), if the replacement index was published on October 18, 2021, the replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the card issuer provides the change-in-terms notice disclosing the replacement index for the variable rate. The following examples illustrate how to determine the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

i. Assume a variable rate used under the plan that is based on the 1-month U.S. Dollar LIBOR index, and assume that LIBOR becomes unavailable after June 30, 2023. On October 18, 2021, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume that on November 16, 2021, pursuant to § 1026.55(b)(3), a card issuer provides a change-in-terms notice under § 1026.9(c)(2) disclosing a new margin of 12% for the variable rate that will apply to new transactions after November 30, 2021, and this change in the margin becomes effective on January 1, 2022. The margin for the variable rate applicable to the transactions that occurred on or prior to November 30, 2021, remains at 10%. Assume that there are no more changes in the margin used on the variable rate that applied to transactions that occurred after November 30, 2021, or to the margin used on the variable rate that applied to transactions that occurred on or prior to November 30, 2021, prior to when the card issuer provides a change-in-terms notice on April 1, 2022, disclosing the replacement index and replacement margins for both variable rates that will be effective on May 17, 2022. In this case, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred on or prior to November 30, 2021, is 10%. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred after November 30, 2021, is 12%. Assume that the card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A replacement margin of 7% is permissible under § 1026.55(b)(7)(ii) for transactions that occurred on or prior to November 30, 2021, because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 12%, which is substantially similar to the 12% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for that balance (which is 10%). A replacement margin of 9% is permissible under § 1026.55(b)(7)(ii) for transactions that occurred after November 30, 2021, because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 14%, which is substantially similar to the 14% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred after November 30, 2021, (which is 12%).

ii. Assume a variable rate used under the plan that is based on the 1-month U.S. Dollar LIBOR index, and assume that LIBOR becomes unavailable after June 30, 2023. On October 18, 2021, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume that on November 16, 2021, pursuant to § 1026.55(b)(4), a card issuer provides a penalty rate notice under § 1026.9(g) increasing the margin for the variable rate to 20% that will apply to both outstanding balances and new transactions effective January 1, 2022, because the consumer was more than 60 days late in making a minimum payment. Assume that there are no more changes in the margin used on the variable rate for either the outstanding balance or new transactions prior to April 1, 2022, the date on which the card issuer provides a change-in-terms notice under § 1026.9(c)(2) disclosing the replacement index and replacement margin for the variable rate that will be effective on May 17, 2022. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for the outstanding balance and new transactions is 12%. Assume that the card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A replacement margin of 17% is permissible under § 1026.55(b)(7)(ii) for the outstanding balance and new transactions because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 22%, which is substantially similar to the 22% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for the outstanding balance and new transactions (which is 20%).

3. *Substantially similar rate using index values on October 18, 2021.* Under § 1026.55(b)(7)(ii), if the replacement index was published on October 18, 2021, the replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. A card issuer is not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of § 1026.55(b)(7)(ii), if a card issuer uses the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the card issuer will be deemed to be in compliance with the condition in § 1026.55(b)(7)(ii) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate calculated using the LIBOR index. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under the plan has a value of 2% on October 18, 2021, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 10%, and the annual percentage rate based on that LIBOR index value and that margin is 12%. Also, assume that the card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A card issuer would satisfy the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12%.) Thus, if the card issuer provides a change-in-terms notice under § 1026.9(c)(2) on April 1, 2022, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on May 17, 2022, the card issuer satisfies the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This is true even if the prime index value or the LIBOR value change after October 18, 2021, and the annual percentage rate calculated using the prime index value and 7% margin on May 17, 2022, is not substantially similar to the rate calculated using the LIBOR index value on October 18, 2021, or substantially similar to the rate calculated using the LIBOR index value on May 17, 2022.

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Section 1026.59—Reevaluation of Rate Increases

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59(f) Termination of Obligation To Review Factors

1. *Revocation of temporary rates.* i. *In general.* If an annual percentage rate is increased due to revocation of a temporary rate, § 1026.59(a) requires that the card issuer periodically review the increased rate. In contrast, if the rate increase results from the expiration of a temporary rate previously disclosed in accordance with § 1026.9(c)(2)(v)(B), the review requirements in § 1026.59(a) do not apply. If a temporary rate is revoked such that the requirements of § 1026.59(a) apply, § 1026.59(f) permits an issuer to terminate the review of the rate increase if and when the applicable rate is the same as the rate that would have applied if the increase had not occurred.

ii. *Examples.* Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. The card issuer offers the consumer a 10% rate on purchases made between February 1, 2012, and August 1, 2013, and discloses pursuant to § 1026.9(c)(2)(v)(B) that on August 1, 2013, the rate on purchases will revert to the original 15% rate. The consumer makes a payment that is five days late in July 2012.

A. Upon providing 45 days' advance notice and to the extent permitted under § 1026.55, the card issuer increases the rate applicable to new purchases to 15%, effective on September 1, 2012. The card issuer must review that rate increase under § 1026.59(a) at least once each six months during the period from September 1, 2012, to August 1, 2013, unless and until the card issuer reduces the rate to 10%. The card issuer performs reviews of the rate increase on January 1, 2013, and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 15%. Beginning on August 1, 2013, the card issuer is not required to continue periodically reviewing the rate increase, because if the temporary rate had expired in accordance with its previously disclosed terms, the 15% rate would have applied to purchase balances as of August 1, 2013, even if the rate increase had not occurred on September 1, 2012.

B. Same facts as above except that the review conducted on July 1, 2013, indicates that a reduction to the original temporary rate of 10% is appropriate. Section 1026.59(a)(2)(i) requires that the rate be reduced no later than 45 days after completion of the review, or no later than August 15, 2013. Because the temporary rate would have expired prior to the date on which the rate decrease is required to take effect, the card issuer may, at its option, reduce the rate to 10% for any portion of the period from July 1, 2013, to August 1, 2013, or may continue to impose the 15% rate for that entire period. The card issuer is not required to conduct further reviews of the 15% rate on purchases.

C. Same facts as above except that on September 1, 2012, the card issuer increases the rate applicable to new purchases to the penalty rate on the consumer's account, which is 25%. The card issuer conducts reviews of the increased rate in accordance with § 1026.59 on January 1, 2013, and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 25%. The card issuer's obligation to review the rate increase continues to apply after August 1, 2013, because the 25% penalty rate exceeds the 15% rate that would have applied if the temporary rate expired in accordance with its previously disclosed terms. The card issuer's obligation to review the rate terminates if and when the annual percentage rate applicable to purchases is reduced to the 15% rate.

2. *Example—relationship to § 1026.59(a).* Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. Upon providing 45 days' advance notice and to the extent permitted under § 1026.55, the card issuer increases the rate applicable to new purchases to 18%, effective on September 1, 2012. The card issuer conducts reviews of the increased rate in accordance with § 1026.59 on January 1, 2013, and July 1, 2013, based on the factors described in § 1026.59(d)(1)(ii). Based on the January 1, 2013, review, the rate applicable to purchases remains at 18%. In the review conducted on July 1, 2013, the card issuer determines that, based on the relevant factors, the rate it would offer on a comparable new account would be 14%. Consistent with § 1026.59(f), § 1026.59(a) requires that the card issuer reduce the rate on the existing account to the 15% rate that was in effect prior to the September 1, 2012, rate increase.

3. *Transition from LIBOR.* i. *General.* Effective April 1, 2022, in the case where the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index, a card issuer may terminate the obligation to review if the card issuer reduces the annual percentage rate to a rate determined by a replacement formula that is derived from a replacement index value on October 18, 2021, plus replacement margin that is equal to the annual percentage rate of the LIBOR index value on October 18, 2021, plus the margin used to calculate the rate immediately prior to the increase (previous formula).

ii. *Examples.* A. Assume that on April 1, 2022, the previous formula is the 1-month U.S. Dollar LIBOR index plus a margin of 10% equal to a 12% annual percentage rate. In this case, the LIBOR index value is 2%. The card issuer selects the prime index published in the Wall Street Journal as the replacement index. The replacement formula used to derive the rate at which the card issuer may terminate its obligation to review factors must be set at a replacement index plus replacement margin that equals 12%. If the prime index is 4% on October 18, 2021, the replacement margin must be 8% in the replacement formula. The replacement formula for purposes of determining when the card issuer can terminate the obligation to review factors is the prime index plus 8%.

B. Assume that on April 1, 2022, the account was not subject to § 1026.59 and the annual percentage rate was the 1-month U.S. Dollar LIBOR index plus a margin of 10% equal to 12%. On May 1, 2022, the card issuer raises the annual percentage rate to the 1-month U.S. Dollar LIBOR index plus a margin of 12% equal to 14%. On June 1, 2022, the card issuer transitions the account from the LIBOR index in accordance with § 1026.55(b)(7)(ii). The card issuer selects the prime index published in the Wall Street Journal as the replacement index with a value on October 18, 2021, of 4%. The replacement formula used to derive the rate at which the card issuer may terminate its obligation to review factors must be set at the value of a replacement index on October 18, 2021, plus replacement margin that equals 12%. In this example, the replacement formula is the prime index plus 8%.

4. *Selecting a replacement index.* In selecting a replacement index for purposes of § 1026.59(f)(3), the card issuer must meet the conditions for selecting a replacement index that are described in § 1026.55(b)(7)(ii) and comment 55(b)(7)(ii)–1. For example, a card issuer may select a replacement index that is not newly established for purposes of § 1026.59(f)(3), so long as the replacement index has historical fluctuations that are substantially similar to those of the LIBOR index used in the previous formula. Except for the Board-selected benchmark replacement for consumer loans as defined in § 1026.2(a)(28), the historical fluctuations considered are the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the card issuer makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices, and no further determination is required. By operation of the Adjustable Interest Rate (LIBOR) Act, Public Law 117–103, division U, codified at 12 U.S.C. 5803(e)(2), and the Board's implementing regulation, 12 CFR 253.4(b)(2), the Board-selected benchmark replacement for consumer loans to replace the 1-month, 3-month, 6-month, or 12-month U.S. Dollar LIBOR index has historical fluctuations substantially similar to those of the LIBOR index being replaced. *See* § 1026.2(a)(28) for the definition of *the Board-selected benchmark replacement for consumer loans.*

See also comment 55(b)(7)(ii)–1. As a result, the Board-selected benchmark replacement for consumer loans meets the ''historical fluctuations are substantially similar'' standard for the LIBOR index being replaced, and no further determination is required. Also, for purposes of § 1026.59(f)(3), a card issuer may select a replacement index that is newly established as described in § 1026.55(b)(7)(ii).

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