ARRC CONSULTATION REGARDING MORE ROBUST LIBOR FALLBACK CONTRACT LANGUAGE FOR NEW CLOSED-END, RESIDENTIAL ADJUSTABLE RATE MORTGAGES

Question 1: *Should fallback language for ARMs include either of the pre-cessation triggers (triggers 4(G)(ii) and 4(G)(iii))? If so, which ones*

1. Pre-cessation triggers should be limited to those akin to 4(G)(iii) whereby Federal or State regulation prevents the continued use of LIBOR. Due to the highly regulated nature of residential mortgage industry, a government-mandated cessation would be the most effective method for the safe and orderly transition from LIBOR for both the industry and our customers.

Question 2: *Please indicate whether any concerns you have about these pre-cessation triggers relate to differences between these triggers and those for standard derivatives or relate specifically to the pre-cessation triggers themselves.*

2. There are concerns related to the use of pre-cessation triggers without regulatory or industry certainty as to the replacement index. Given the highly regulated nature of the industry, consumer protection public policy, and high litigation risk, without this level of certainty pre-cessation presents too many potential risks for the industry.

   This is beyond even the consequences of incongruity between the triggers for ARM products and cash/derivative products, which could cause existing ARM margins to be inadequate to cover additional hedging costs if the fallback language for derivatives do not align with that of the ARMs.

Question 3: *If pre-cessation triggers are not included, what options would be available to market participants to manage the potential risks involved in continuing to reference a Benchmark whose regulator has publicly determined that it is not representative of the underlying market?*

3. Historically, US Banks used the U.S. Treasury Indices to price Adjustable Rate Mortgages. If LIBOR ceases to exist, and SOFR is not yet developed, presumably the industry could fall back to using U.S. Treasury Indices and adjust ARM Margins to account for the additional 'basis risk'.

Question 4: *The ARM language proposed uses simplified language in an effort to be more comprehensible for the consumer market. Is the simplified language appropriate or are there concerns with the language not matching ISDA or other cash product language precisely?*

4. No concerns with differing language as written.

Question 5: *Is the replacement index determined by the Federal Reserve Board, the Federal Reserve Bank of New York, or a committee endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York the best choice as the first step of the waterfall? Why or why not?*

5. Yes, provided that this replacement has been operationalized for effective use by the industry, and has been accepted/endorsed by FNMA and Freddie Mac.

Question 6: *As noted in the narrative, the ARRC has committed to recommending spread adjustments for cash products that reflect the general difference between various tenors of LIBOR and SOFR. In addition, the ARRC has committed to seeing all-in, "spread-adjusted" rates published for use in cash products (e.g., a SOFR-based spread-adjusted replacement index for 1-year LIBOR). Should the ARRC recommend a spread adjustment for LIBOR ARMs and other consumer products, and should the corresponding spread-adjusted rate be the replacement index for the LIBOR ARMs?*

6. Yes, it is the preference of the industry for a spread-adjustment to be calculated and published for public use.

Question 7: *As noted in the narrative, in addition to recommending SOFR, the ARRC may recommend forward-looking term SOFR rates if it is satisfied that a robust, IOSCO-compliant term rate that meets its criteria can be produced. If the ARRC recommends forward-looking term rates (e.g., 1-month, 3-month, 6-month, etc.) and a corresponding spread adjustment, should a spread-adjusted term rate be the replacement index for LIBOR ARMs, or would a spread-adjusted average (simple or compounded) of SOFR be more appropriate? Please provide support for your answer.*

7. The preferred replacement would be a 'spread-adjusted term rate' for re-pricing Adjustable Rate Mortgages.

Question 8: *Should the Note Holder have the responsibility as the 2nd and last step of the waterfall? Why or why not?*

8. An industry-selected index is preferred as the final step of the waterfall rather than note-holders having responsibility to select the index. The goal of the waterfall should be for standardization.

Question 9: *Should the Note Holder have the ability to make adjustments (positive or negative) to the loan's margin to more closely approximate LIBOR at the time of replacement? Why or why not? If you do not believe the Note Holder should make adjustments to the loan's margin, and potential replacement indices diverge from the value of the current Index, what provision or step should be taken to preserve that consistency?*

9. Yes. The chosen Index may not align with the Lender's hedging costs and therefore the Lender should have the ability to adjust the ARM margin accordingly.

Question 10: *If the Note Holder is a trust (for example, as may occur in private label MBS), is there some entity other than the Note Holder that should be responsible for identifying the Replacement Index if Step 1 of the waterfall fails? Please provide sufficient rationale for your answer*

10. No comment as this does not apply to our Firm's business.

Question 11: *Will this language have unintended consequences not considered by the ARRC working group, such as title insurance restrictions, state law endorsement or filing restrictions, etc.? If so, please explain and provide information about why this language would present challenges. If there are concerns with this proposed language, please be sure to specify if concerns relate to this proposed language, or index replacement language in general.*

11. There are concerns whereby if states have not uniformly endorsed the adoption of the new index that lenders, whether state or nationally chartered, could be prohibited from moving to the new index due to varying laws across states.

Question 12: *Is there any provision in the proposal that would significantly impede ARM originations? If so, please provide a specific and detailed explanation.*

12. We are not aware of any provision of the proposal that would significantly impede ARM originations

Question 13: *Please provide any additional feedback on any aspect of the proposal.*

13. The only additional feedback we would provide is to reiterate a call for regulatory mandates (at both the state and federal level) to synchronize and standardize the transition from LIBOR to SOFR.