February 5, 2019

The Alternative Reference Rates Committee, sponsored by the Board of Governors of the Federal Reserve System and the Federal Reserve Board of New York

Re: ARRC Consultation on New Issuances of LIBOR Securitizations

Dear Sir or Madam:

The Commercial Real Estate Finance Council (CREFC) is pleased to provide comments in response to the Alternative Reference Rates Committee's (ARRC) *Consultation on New Issuances of LIBOR Securitizations* (Consultation). The Consultation seeks public input on draft language for new contracts that reference LIBOR so as to ensure these contracts will continue to be effective in the event that LIBOR is no longer usable or available. The Financial Conduct Authority (FCA), which has regulatory oversight over LIBOR, announced in July 2017 that it would no longer compel banks to submit quotes for LIBOR after 2021.[1]

CREFC members represent U.S. commercial and multifamily real estate investors, lenders, and service providers – a market with an estimated $4.2 trillion of commercial real estate (CRE) debt outstanding.[2] A significant portion[3] of this debt is structured as floating-rate and indexed to U.S. dollar (USD) LIBOR. In addition, floating-rate CRE loans and commercial mortgage-backed securities (CMBS) typically have maturities of two to seven years, meaning that CRE sector debt instruments are medium- to long-dated making the results of the Consultation even more important for this industry, given the FCA's timeline, relative to products with shorter term durations.

CREFC Responses to Consultation Questions

The questions posed in the Consultation primarily fall under three critical areas in contract documentation as they relate to the selection of a new rate in the event of a permanent cessation or disruption to LIBOR: **Triggers**, **Replacement Benchmark Waterfall**, and **Replacement Benchmark Spread Waterfall**. In addition, the Consultation includes certain global and general questions. CREFC's responses to the Consultation questions can be found below.

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[1] https://www.fca.org.uk/news/speeches/the-future-of-libor. In addition, the timeline set forth by the ARRC's Paced Transition Plan has an anticipated completion date by the end of 2021: https://www.newyorkfed.org/medialibrary/microsites/arrc/files/2017/October-31-2017-ARRC-minutes.pdf.

[2] Federal Reserve Flow of Funds as of September 30, 2018: https://www.federalreserve.gov/releases/z1/current/default.htm

[3] Based on data from J.P. Morgan and the Federal Reserve, the current outstanding balance of CRE loans indexed to LIBOR is approximately $1.3 trillion.

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Question 1: *Which securitization asset classes are you referring to in your response to this consultation if limited to only certain asset classes? If there are particular features of these asset classes that shape your responses to the questions in this survey, please describe them to the extent possible.*

For commercial real estate, the securitized asset classes that reference LIBOR comprise commercial mortgage-backed securities (CMBS) and collateralized loan obligations (CLOs) across both agency (i.e., Fannie Mae and Freddie Mac) and private-label sponsors. For non-agency CRE securitization, the sectors with the largest exposures to LIBOR are single-asset single-borrower (SASB) CMBS and CRE CLOs. An approximate breakdown of the floating-rate CRE securitized market can be found below.[4]

CRE Sector	**Approximate Outstanding Notional Indexed to LIBOR ($B)**
Agency CMBS - Structured Adjustment-Rate Mortgages (Fannie Mae)	$50
Private-Label CMBS - SASB	$45
Agency CMBS - Freddie K Floater (Freddie Mac)	$40
Private-Label CRE CLOs	$18
Private-Label CMBS - Pooled Floaters	$5
Total	**$158**

I. <u>Triggers</u>

The Consultation proposes six triggers that would signal the conversion from LIBOR (the Benchmark) to a new reference rate. Note that this is one more than the five triggers proposed by the other ARRC working groups, and is due to the unique nature of the securitization markets that involve both assets and liabilities. The first two triggers are intended to match the triggers that the International Swaps and Derivatives Association (ISDA) plans on incorporating into their definition of USD LIBOR as it relates to interest-rate derivatives and apply upon the permanent cessation of LIBOR. The remaining four triggers contemplate a transition to a new reference rate in the absence of a permanent cessation of LIBOR and are referred to as "pre-cessation" triggers. The Consultation uses the placeholder defined term "Designated Transaction Representative" (DTR) to allow the parties in a securitization the ability to assign responsibility for making certain decisions to the party, agreed to by the securitization parties, most appropriate to perform those obligations in that specific transaction.

Question 2: *The ISDA triggers contemplate a permanent cessation of LIBOR as of a date certain, which may be announced in advance (the "Cessation Date"), at which point the transition from LIBOR to SOFR would occur. As there may be operational challenges for securitizations as both assets and liabilities will have to be transitioned, some have asked for the ability to transition in advance of the Cessation Date in order to address any operational issues that may arise.*

[4] J.P. Morgan, *"A dog's breakfast: securitized products and benchmark reform,"* September 14, 2018.

Specifically, the Designated Transaction Representative (as defined in Appendix I) will have the ability to pick one date within a 30-day period prior to the Cessation Date to facilitate an orderly transition. Do you feel the inclusion of this ability to transfer prior to the Cessation Date is needed? If so, please explain the specific, critical, and tangible needs that support its inclusion?

In general, as the securitization structure consists of both assets (the underlying loans) and liabilities (the securities), certain CREFC members feel that an ability to transition prior to the Cessation Date should be included. The proposed language should allow for conversion away from LIBOR on dates that make sense so that the assets and liabilities in the securitization are able to transfer on the same date, or dates that allow for the assets and liabilities to remain in sync. In addition, the language that controls this should be clearly drafted to minimize discretion by the DTR.

Question 3(a): *Should fallback language for Securitizations include any of the pre-cessation triggers (clauses (3), (4), (5) and (6) of the Benchmark Discontinuance Event definition)? If so, which ones? Also, please identify any pre-cessation triggers that you do not believe should be utilized for a particular securitization product and explain why.*

CREFC and its members believe the fallback language should include all four pre-cessation triggers.

Question 3(b): *Please indicate whether any concerns you have about these pre-cessation triggers relate to the differences between these securitization triggers and those for standard derivatives or whether your concerns relate specifically to the pre-cessation triggers themselves.*

CREFC and its members are proponents of the pre-cessation triggers and understand that they may introduce additional complexity as ISDA and the derivatives market only have two triggers, each of which contemplates a permanent cessation of LIBOR. Despite the operational challenges this introduces, our members are strong advocates of the pre-cessation triggers given the highly complex and varied nature of securitizations in which both assets and liabilities have to be considered.

Question 3(c)*: If you believe that the pre-cessation trigger in clause (6) (Asset Replacement Percentage) should not be retained, please note any specific concerns leading to this conclusion. If you believe that it should be retained, are there any changes you believe should be made to this trigger? Please explain.*

CREFC and its members believe all four pre-cessation triggers, including the Asset Replacement Percentage trigger, should be included

Question 3(d)*: If you believe the pre-cessation trigger in clause (6) (Asset Replacement Percentage) should be retained, how would you address concerns that it could result in a transfer of value in a transaction where the Designated Transaction Representative (DTR) has the ability to change the benchmark used on the underlying assets and, as a result, determine the timing of this pre-cessation trigger? Are there other changes that should be made to the Asset Replacement*

Percentage trigger? Note that this trigger relates to a mismatch between the securities and the securitization assets that results from changes in the assets. A mismatch may also arise from a change in the securities due to a trigger event under these fallback provisions. Any concerns with the latter scenario can be addressed in responses to Question 16.

CREFC and its members are not overly concerned about the DTR taking advantage of this trigger to benefit one party over another. The trigger can only be used one time (i.e., 'one and done'); thereafter, should the collateral percentage drop below the threshold and went back up, it could not be used again. In addition, there is flexibility on the 50% target used for the test (i.e., the parties to the securitization can agree to a different percentage). That said, it is important that transactions are implemented with clear language that minimizes discretion as to when this trigger may be utilized.

Question 3(e): *If pre-cessation triggers are not included, are there options available to market participants to manage the potential risks involved in continuing to reference a Benchmark in the circumstances contemplated by each of these pre-cessation triggers?*

CREFC and its members believe the fallback language should include all four pre-cessation triggers.

Question 4: *Should the proposed securitization fallback language permit the Designated Transaction Representative to transition the securities after a trigger has occurred but before the Benchmark Replacement Date? Should any limitations be placed on its use? Should there be a limited date range (e.g., 60 days) prior to the Benchmark Replacement Date in which this could be used? Should the Designated Transaction Representative be limited in the circumstances under which it could elect to utilize the additional time? If so, what standard should be utilized to assess whether the additional time is necessary? In each case, please explain why.*

In general, CREFC and its members agree that a narrow date range makes sense to limit the opportunity for the DTR to initiate a switch at a time that is more advantageous for the DTR. As long as there is clearly drafted language indicating that the DTR will use the additional time only if necessary to ensure an orderly transition, any "gaming" of the option, while not fully preventable, will hopefully be minimized.

II. Replacement Benchmark Waterfall

Once a trigger event occurs, the transition away from LIBOR to a new rate (which is referred to in the Consultation as the "Replacement Benchmark") will occur. In June 2017, the ARRC announced the selection of the Secured Overnight Financing Rate (SOFR) as its preferred rate. SOFR is an overnight, secured, nearly risk-free rate, while LIBOR is an unsecured rate with a "term structure," as it is published at several different maturities (e.g., 1-month, 3-month, 6-month, etc.). The ARRC, in its Paced Transition Plan, estimates that a term structure for SOFR should be completed by the end of 2021. The Replacement Benchmark Waterfall in the Consultation lays out the priority of rates to use at the time of transition.

Question 5(a): *If the ARRC has recommended a forward-looking term rate, should that rate be the primary fallback for the securities referencing LIBOR even though derivatives are expected to reference overnight versions of SOFR? Please explain why.*

While a term rate is not an option being considered by ISDA for derivatives, we have heard from many of our members that it would be a preferable alternative to a compounded average of the overnight rate. A term rate would represent a forward-looking assessment of the interest rate and would therefore, with the applicable spread adjustment, more closely replicate the existing LIBOR rate, which is also a forward-looking interest rate.

Question 5(b): *Is there a specific reason that the securitization market should first fall back to forward-looking term SOFR instead of another rate? Please explain why.*

As noted above, many of our members prefer a term rate over a compounded average of the overnight rate. In addition to being consistent with current CRE loan and securitization documentation, the various parties involved in a CRE securitization from the issuer to the trustee, are not currently equipped from an operational standpoint to use overnight rates.

Question 5(c): *Is the use of an Interpolated Period appropriate in the securitization markets? Please explain any limitations that should be applied to the use of an Interpolated Period.*

CREFC and its members are generally comfortable with the use of interpolation to derive a SOFR term rate that was not recommended or endorsed by the ARRC. For example, if at a future date the ARRC has recommended 1-month and 6-month SOFR term rates but not a 3-month rate, we feel it is appropriate to use interpolation to determine the 3-month rate. However, if the ARRC only recommends a 1-year rate, using interpolation to determine, for example, a 1-month rate using an overnight rate and a 1-year rate will not be feasible. The exact limitations to interpolation will require further analysis and discussion with our members. In addition, and as noted below, CREFC and its members have a strong preference for a third-party provider to perform all calculations related to the adjustments to SOFR, including developing interpolated rates and publishing them in a clear and transparent manner.

Question 5(d): *In the event a Replacement Benchmark is determined other than under Step 1 of the waterfall, should the waterfall provide that the Replacement Benchmark be changed in the future as soon as a rate can be established under Step 1 of the waterfall?*

As mentioned earlier, CREFC and its members have a preference for a forward-looking term SOFR as the primary fallback. However, if, at the time of transition, a term rate is not available and another rate from the waterfall is selected, our members feel there should be the ability to transition to a term rate if it becomes available. The mechanics of this, given the various parties involved in a securitization, will need to be addressed and could potentially follow a streamlined subset of the decision mechanics outlined in Appendix IV of the Consultation (which relates to the situation in which the last step of the Replacement Benchmark Waterfall has been reached) and/or other contract language that allows for a periodic retesting of the waterfall.

Question 6(a): *Should Compounded SOFR be the second step in the waterfall? Would this preference be influenced by whether ISDA implements fallbacks referencing Compounded SOFR or overnight SOFR?*

CREFC and its members believe Compounded SOFR should follow in priority after a forward-looking term rate. Based on guidance from ISDA and the results of its recent consultation, we understand that Compounded SOFR will be the fallback advocated by ISDA.

Question 6(b): *If you believe that Compounded SOFR should be included, which compounding period is preferable ("in arrears" or "in advance")? Please explain why. Would this preference be influenced by whether ISDA implements fallbacks referencing Compounded SOFR "in arrears" or "in advance?" Please explain whether your preference is based on operational concerns in implementing a particular approach or on economic concerns.*

CREFC and its membership are generally concerned with the prospect of value transfer in a transition from LIBOR to SOFR. At the same time, our members are also very concerned that the transition be conducted in an orderly manner that minimizes volatility and provides the market with sufficient information that is both objective and readily available.

The "in advance" rate has the appeal of allowing for a known interest payment at the start of a relevant calculation period. However, the "in advance" rate is not forward looking and therefore will not incorporate market expectations of the future path of rates. This backward looking nature of the "in advance" rate may lead to adverse incentives for market participants to attempt to trade around views of the future path of rates that are not reflected in the current interest setting. The "in arrears" rate has several advantages, including replicating interest rates that are actually observed over the relevant interest period (i.e., the coupon period is aligned with the compounding period) and mirroring the structure of the overnight index swaps market. Consequently, the "in arrears" rate has the lowest potential for value transfer and is also the optimal rate for corresponding swaps contracts as the derivatives market is expected at this time to adopt the "in arrears" protocol.

An important drawback of the "in arrears" rate is that the information needed to determine the rate will not be available at the start of the interest accrual period (i.e., the rate will not be known until the end of the interest period). As a result, incorporating an "in arrears" rate will require significant contractual and operational changes. This is illustrated in the following example:

<u>Sample SASB CMBS Offering</u>

<u>Loan Information for February 2019 Payment:</u>
- Loan Accrual Period: 1/15/19 – 2/14/19
- Rate is selected two business days in advance of the Loan Accrual Period, or on 1/11/19
- Loan Payment Date: 2/9/19 or next business day (2/11/19)

<u>Bond and Servicer/Trustee/Certificate Administrator Information:</u>
- Bond Accrual Period mirrors the Loan Accrual Period: 1/15/19 – 2/14/19
- Rate for the bond is selected two business days in advance of the Bond Accrual Period, or on 1/11/19
- Servicer receives payment on the loan on 2/9/19 or next business day (2/11/19)
- Bond Payment Date: 2/15/19

In the case above, which is representative of the majority of SASB CMBS transactions, the borrower makes a loan payment on February 11, 2019 which is <u>prior to the end of the interest accrual period</u> (of February 14, 2019). The servicer receives this payment on February 11, 2019 and performs the required administrative steps before the bond investors are paid on February 15, 2019. This structure requires that the interest rate is known in advance given the payment date, which falls before the end of the interest accrual period. Existing transactions using LIBOR determine this rate prior to the beginning of the interest accrual period (but it is set at that time to a rate that, given the nature of the LIBOR rate, represents the expected future rate of interest during that accrual period). Utilizing the compounded "in arrears" method will require the interest rate to be determined at the end of the accrual period and therefore may require changes to the loan payment and bond payment dates.

Another area in which the "in arrears" rate will require operational changes is in the secondary market trading of CRE securities and the pricing of trades that occur between interest periods. Given the operational considerations raised by some of our members, we have not ruled out the in advance rate as a viable alternative. However, and while the in advance calculation would be easier to incorporate, other members feel it is more important to maximize economic efficiency and remain consistent with the derivatives market and to therefore craft operational solutions accordingly.

Question 6(c): *If it was necessary to calculate Compounded SOFR and a third party was not available to perform those calculations, are there parties to the securitization transactions with sufficient resources to perform those calculations accurately and efficiently? Are there other considerations relating to the calculation of Compound SOFR that would make it an undesirable Replacement Benchmark without the availability of a third-party provider?*

CREFC and its members have a strong preference for a third-party provider to perform these calculations. In addition, the calculations should be easily accessible to all market participants (e.g., via a web site posting, Bloomberg, etc.). Based on numerous conversations on this topic, it will be challenging to find a party within CRE securitization structures willing to take on this responsibility.

Question 7: *As noted, this consultation does not include Spot SOFR as a third step in the waterfall. Do you believe that Spot SOFR is an appropriate fallback reference rate for Securitization contracts or should the second step in the replacement rate waterfall be Compounded SOFR , after which the replacement rate would be, first, recommended by the Relevant Governmental Body, second, default to then-current ISDA Definitions, and third, proposed by the Designated Transaction Representative?*

CREFC's members have not ruled out the spot rate comparison of the difference between LIBOR and SOFR as we have heard from some of our membership that the sheer simplicity of such a pairing may be appealing and that it more closely mirrors the fallback calculations in some of the CRE loans currently being originated. However, many members are aware of the significant disadvantages of the spot rate comparison (e.g., it reflects one-day borrowing) and indicated they are using a spot rate comparison in current contracts as a stopgap until the market coalesces around new standards.

Question 8: *In the future circumstance where there is no SOFR-based fallback rate, is the replacement rate determined by the Relevant Governmental Body the best alternative at this level of the waterfall? Please explain why.*

CREFC and its members have a strong preference for a governmental agency or authority (e.g., the Relevant Governmental Body) to determine the appropriate replacement rate if SOFR was deemed unsuitable or was no longer published.

Question 9: *In the future circumstance where there is no SOFR-based fallback rate and the Relevant Governmental Body has not recommended a replacement rate for Securitizations, is the fallback for SOFR-linked derivatives set forth in the ISDA definitions at the time of cessation the best alternative at this level of the waterfall? Is this fallback appropriate if ISDA Definitions only include overnight fallback rates? Please explain why.*

As derivatives comprise approximately 95% of the USD LIBOR exposure[5] and given ISDA's various efforts in the global IBOR transition, CREFC and its members feel it is appropriate to utilize the ISDA definitions if there is no SOFR-based fallback and the Relevant Governmental Body has not recommended a replacement rate.

Question 10(a)*: Since it is unlikely that there will be no ISDA fallback (clause (a) above), this provision is more likely to occur (if at all) when the ISDA fallback is deemed not appropriate for securitization securities (clause (b) above). In that scenario, is this provision appropriate as the final step in the Replacement Benchmark Waterfall? Please explain why.*

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[5] Sum of OTC and Exchange Traded Derivatives based on data from Federal Reserve staff calculations, BIS, Bloomberg, CME, DTCC, Federal Reserve Financial Accounts of the Unites States, G.19, Shared National Credit, and Y-14 data, and JPMorgan Chase. Data are gross notional exposures as of year-end 2016.

CREFC and its members believe that if there was a situation in which the transition process had reached this far down the waterfall and that ISDA's fallback rate was deemed not appropriate for securitizations, the DTR should have the ability to propose a replacement rate (following the decision mechanics illustrated in Appendix IV of the Consultation). Accordingly, CREFC and its members believe this provision is appropriate as the final step in the Replacement Benchmark Waterfall.

***Question 10(b)**: Should the provision allow for "re-testing" the waterfall to determine whether another Replacement Benchmark has become available in the scenario where investors have rejected the Proposed Replacement Benchmark? Should the waterfall be re-tested in any other circumstances (e.g., any time the Replacement Benchmark has been determined under a "less-desirable" clause)? How often? Please explain why.*

CREFC and its members believe that a re-testing of the waterfall, if a proposed replacement rate is rejected, should be allowed (as illustrated in Appendix IV of the Consultation) and that the results of the re-testing should then remain in effect. However, and as noted throughout this response, CREFC and its members have a preference for a forward-looking term SOFR as the primary fallback. As a result, re-testing at a periodic interval or, alternatively, contract language allowing for re-testing only if a term rate became available may be considered.

III. Replacement Benchmark Spread Waterfall

Given the credit and structural differences between LIBOR and SOFR (i.e., SOFR is an overnight, secured, nearly risk-free rate, while LIBOR is an unsecured rate with a term structure), the transition to SOFR will require a spread adjustment to produce more comparable rate levels. The Consultation provides for a spread adjustment to be included in the determination of any Replacement Benchmark. The particular spread adjustment to be used is selected at the time that the Replacement Benchmark is selected according to the waterfall in the Consultation.

***Question 11**: Are there any concerns if a spread adjustment was utilized with cash products that was calculated by a spot rate comparison of the difference between LIBOR and the Replacement Base Rate at the time of conversion? Should this option be included in the spread waterfall? If so, where?*

CREFC's members have not ruled out the spot rate comparison of the difference between LIBOR and SOFR as we have heard from some of our membership that the sheer simplicity of such a pairing may be appealing and that it more closely mirrors the fallback calculations in some of the CRE loans currently being originated. However, as noted above, many of our members are aware of the disadvantages of the spot rate comparison and indicated they are using it as a stopgap until the market coalesces around new standards.

***Question 12:** Do you believe that the ARRC should consider recommending a spread adjustment that could apply to cash products, including Securitizations?*

CREFC and its members believe that, if the ARRC recommends a forward-looking term rate (i.e., the first step of the Replacement Benchmark Waterfall), then the ARRC should also recommend a corresponding spread adjustment.

Question 13(a): *Is a spread adjustment applicable to fallbacks for derivatives under the ISDA definitions appropriate as the second priority in the spread waterfall? Please explain why.*

As Compounded SOFR is second in priority in the Replacement Benchmark Waterfall and will be the standard used for derivatives based on guidance thus far from ISDA, CREFC and its members believe that a spread adjustment selected by ISDA is appropriate as the second priority in the spread waterfall.

Question 13(b): *If the ARRC has recommended a forward-looking term SOFR but has not recommended a corresponding spread adjustment under Step 1 above, do you believe that the ISDA spread adjustment described in Step 2 (which may be intended to apply to a different Replacement Base Rate) should apply to Securitizations? Please explain why.*

CREFC and its members are generally of the mindset that it would be unusual for the ARRC to recommend a forward-looking term SOFR without a corresponding spread adjustment. However, in this situation – where the ARRC recommends a term SOFR and not a spread adjustment – CREFC and its members would like to then see the ARRC endorse or approve an externally published spread adjustment (inclusive of the adjustment recommended by ISDA).

Question 13(c): *Given that ISDA has not yet decided upon the spread calculation methodology, should Step 2 be excluded from the waterfall? Please explain why.*

Based on guidance from ISDA as well as the results of their recent consultation, it appears ISDA will recommend a spread adjustment based on a historical mean/median approach. As ISDA has neared a decision on this matter, CREFC and its members do not feel that Step 2 should be excluded from the waterfall.

IV. Other / General

The Consultation also includes questions that address other key global and general risks, in addition to allowing for commentary on any points not taken into consideration.

Question 14(a): *What type of institution can and should take on the responsibility to (i) determine whether the proposed triggers have occurred, (ii) select screens where reference rates or spreads are to be found, (iii) make calculations of a rate or spread in the absence of published screen rates, (iv) interpolate term SOFR if there is a missing middle maturity and/or (v) elect to cause an early transition under the proviso to the definition of Benchmark Replacement Date?*

CREFC and its members have a strong preference for a third-party provider to make these decisions and calculations. Based on numerous conversations on this topic, it will be challenging to find a party within CRE securitization structures willing to take on these responsibilities. This excludes roles and decisions assigned to the Designated Transaction Representative, for which the party (or parties) involved as well as the specific responsibilities will be clearly outlined in the securitization documents.

Question 14(b): *Whether as issuer, sponsor, servicer or calculation agent, would your institution be willing to (i) determine whether the proposed triggers have occurred, (ii) select screens where reference rates or spreads are to be found, (iii) make calculations of a rate or spread in the absence of published screen rates, (iv) interpolate term SOFR if there is a missing middle maturity and/or (v) elect to cause an early transition under the proviso to the definition of Benchmark Replacement Date?*

CREFC and its members have a strong preference for a third-party provider to make these decisions and calculations. Based on numerous conversations on this topic, it will be challenging to find a party within CRE securitization structures willing to take on these responsibilities. This excludes roles and decisions assigned to the Designated Transaction Representative, for which the party (or parties) involved as well as the specific responsibilities will be clearly outlined in the securitization documents.

Question 15: *Is there any provision in the proposal that would significantly impede securitization issuances? If so, please provide a specific and detailed explanation.*

While important areas remain where further clarity is needed including the timing of a term structure for SOFR or, in its absence, the ability of the securitization markets to incorporate a compounded version of SOFR, CREFC and its members do not believe there are any provisions in the Consultation that would significantly impede securitization issuances. However, once SOFR-linked securitization transactions commence, CREFC and its members expect there to be challenges that were not anticipated but that should be addressed.

Question 16: *Given the fallback language for the securitization and the underlying assets may operate independently, please identify any sources of misalignment between those components that are not addressed in the consultation.*

CREFC and its members recognize the potential for basis risk between during the initial years of the transition, especially as it relates to legacy assets that have a wide range of fallback rate mechanics. In addition, we anticipate that there will be a 'settling in' period as the cash and derivatives markets adapt to their divergent approaches. The derivatives market as noted is only considering two "hard deadline" triggers while the cash products markets have introduced the ability to transition prior to the Cessation Date (i.e., the pre-cessation triggers). Moreover, the ARRC is working toward a term structure for SOFR by the end of 2021, while ISDA is not contemplating a term structure for the derivatives market and will rather fallback to a compounded average of SOFR. As a result, there is a realistic possibility that cash products, including securitizations, may reference a forward-looking term rate while derivatives, including related swaps, will reference an adjusted compound average of the overnight rate. CREFC and its members expect this to be one of the more challenging issues that the market will have to work through. CREFC and its members also expect that there may be other unanticipated challenges and complications that the market will need to address.

Question 17: *Are there specific operational challenges that implementing the proposed fallback language might create for securitizations? If so, what are those challenges and under what circumstances might they occur? How might they be mitigated?*

Certain operational challenges are described in our response to Question 6(b) above, including securitization structures in which payments on the underlying loans are made prior to the end of interest accrual periods. Potential corrections for this situation include changing the loan payment date to correspond to the end of the interest period and introducing a payment delay for the bonds. Other operational challenges include ensuring that all reporting systems can incorporate three variables (SOFR, spread adjustment, credit spread) compared to the current two variables (LIBOR, credit spread). Updating and testing systems as soon as possible would help alleviate these challenges; however, this would require both a significant time commitment as well as significant financial resources by the market in the absence of actual SOFR-based securitizations.

Question 18: *Please provide any additional feedback on any aspect of the proposal.*

CREFC and its members understand that the Consultation, given the numerous asset classes involved, addresses the securitization market on a high level. However, it is important to note that there are key differences, both idiosyncratic and structural, between the various asset classes and coordination with the underlying loan and securitization documentation, especially in the case of CRE securitization, is imperative. CREFC will be closely monitoring the efforts of the ARRC's Consumer Products Working Group (which had its first meeting recently) as it will be focused on loan-level fallback language.

We appreciate this opportunity to comment, and we look forward to working constructively with the ARRC on this important matter.

Sincerely,

Lisa A. Pendergast

Lisa Pendergast
Executive Director
Commercial Real Estate Finance Council