New York State Department of Financial Services

Amendment to 3 NYCRR 333

Indices Which May Be Used in Connection with Variable Rate Closed-End Personal Loans Made by Lending Institutions Pursuant to Part 33 or in Connection with Variable Rate Open-End Accounts Established by Banking Institutions Pursuant to Part 90

Amendment to 3 NYCRR 334

Indices Which May Be Used in Connection with Part 80 Variable Rate Junior Mortgage Loans, Part 91 Variable Rate Installment Agreements and Part 92 Variable Rate Closed-End Retail Installment Contracts and Obligations

I, Adrienne A. Harris, Superintendent of Financial Services of the State of New York, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, Sections 10, 14, 108.4, 108.5, 202, 235.8-b, 351.2, and 590-a.3 of the Banking Law; and Sections 303, 404, and 413 of the Personal Property Law, do hereby promulgate the following amendments to Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon filing of the Notice of Emergency Adoption with the Secretary of State, to read as follows:

(Matter In Brackets Is Deleted; New Matter Is Underlined)

Section 333.1 is amended to read as follows:

The following are the indices approved by the superintendent, for use by lending institutions which are making variable rate closed-end personal loans pursuant to the provisions of Part 33 of this Title, and for use by banking institutions which establish variable rate open-end accounts pursuant to the provisions of Part 90 of this Title:

(a) the bank prime loan index;
(b) the indices for one-month, three-month or six-month certificates of deposit sold in the secondary market;
(c) the indices for the auction averages from the sale of United States three-month, six-month or one-year Treasury bills;
(d) the indices for three-month, six-month or one-year Treasury bills sold in the secondary market;
(e) the indices for the one-year, two-year, three-year, five-year, seven-year, ten-year, twenty-year or thirty-year constant maturity yield for United States Treasury securities;
[(f) the index for the average cost of funds for FSLIC-insured institutions, for the New York district, as published by the Federal Home Loan Bank Board;]
([g]f) the prime rate as published by *The Wall Street Journal;* and
[(h) the indices for one-month, three-month, six month and one year London Interbank Offered Rate (LIBOR) as published in *The Wall Street Journal.*]

(g) the indices for one-month, three-month, six-month and twelve-month Secured Overnight Financing Rate (SOFR), published as "CME Term SOFR" rates by the CME Group Benchmark Administration Limited.

The indices under subdivisions (a) through (e) of this section are published and announced by the Board of Governors of the Federal Reserve System in such publications as *The Federal Reserve Bulletin,* H.15, G.13, etc. With respect to these indices, where daily rates and weekly and monthly averages of such daily rates are published, this Part allows use of either the daily rate or the weekly or monthly average rate for such index. This Part also allows use of a rate such as a quarterly or semiannual rate calculated by averaging four or less of the subdivision (a) through (e) rates. In the event of split rate figures for the prime rate as published under subdivision ([g]f) of this section, the lending or banking institution shall use the low figure except where use of the high figure or an average of the two figures is provided by contract and disclosed to the borrower or customer.

Section 334.1 is amended to read as follows:

The following indices are approved by the superintendent for use in connection with variable rate junior mortgage loans made pursuant to Part 80 of this Title by licensees as defined thereunder, in connection with variable rate retail instalment credit agreements established pursuant to Part 91 of this Title by retail sellers or creditors as defined thereunder, and in connection with variable rate closed-end retail instalment contracts and obligations entered into pursuant to Part 92 of this Title by retail sellers or holders as defined thereunder:

(a) the bank prime loan index;
(b) the indices for one-month, three-month or six-month certificates of deposit sold in the secondary market;
(c) the indices for the auction averages from the sale of United States three-month, six-month or one-year Treasury bills;
(d) the indices for three-month, six-month or one-year Treasury bills sold in the secondary market;
(e) the indices for the one-year, two-year, three-year, five-year, seven-year, ten-year, twenty-year or thirty-year constant maturity yield for United States Treasury securities; and
(f) the prime rate as published in *The Wall Street Journal*{.}; and
[(g) the indices for one-month, three-month, six-month and one year London Interbank Offered Rate (LIBOR) as published in *The Wall Street Journal.*]
(g) the indices for one-month, three-month, six-month and twelve-month Secured Overnight Financing Rate (SOFR) published as "CME Term SOFR" rates by the CME Group Benchmark Administration Limited.

All the indices listed above, except (f), and (g) are published and announced by the Board of Governors of the Federal Reserve System in such publications as *The Federal Reserve Bulletin,* H.15, G.13, etc. With respect to any indices listed under subdivisions (a) through (e) of this section which provide daily rates and also weekly and monthly averages of such daily rates, this

Part allows use of either the daily rate or the weekly or monthly average rate for such index. In the event of split rate figures for the prime rate as published under subdivision (f) of this section, the licensee, retail seller or creditor, or retail seller or holder shall use the low figure except where use of the high figure or an average of the two figures is provided by contract and disclosed to the borrower or buyer. Except as provided above, averaging of index figures is prohibited.

CERTIFICATION

I, Adrienne A. Harris, Superintendent of Financial Services, do hereby certify that the attached amendments of the Superintendent's Regulations, Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York, were duly authorized by me, pursuant to the authority granted by Sections 14.1, 108.4, 108.5, 202, 235.8-b, 351.2, and 590-a.3 of the Banking Law; and Sections 303.4, 404.4, and 413.3 of the Personal Property Law, to take effect upon filing with the Secretary of State of New York.

Pursuant to Section 202(6) of the State Administrative Procedure Act, this regulation is being promulgated as an emergency measure for the preservation of the general welfare. A statement of the specific reasons for the finding of the need for emergency action is attached.

Signed copy filed with Department of State

Adrienne A. Harris
Superintendent of Financial Services

Date: March 17, 2023

Statement of the Reasons for the Adoption of Emergency Amendments to Parts 333 and 334 of the Superintendent's Regulations of 3 NYCRR

Pursuant to the Banking Law and Personal Property Law, the Department of Financial Services is required to approve indices that can be used as benchmarks to set interest rates for certain variable interest rate loans. The approved indices are specified in Parts 333 and 334 of Title 3 of the NYCRR. The London Inter-Bank Offered Rate ("LIBOR") was a major benchmark index commonly used by the industry and both Parts 333 and 334 have listed one month, three-month, six-month, and one year LIBOR as approved benchmark rates.

After several articles were published speculating that LIBOR was being manipulated by the banks that calculated the rate, a number of civil and criminal investigations were opened into the potential manipulation. The investigations confirmed the manipulation and substantial penalties were imposed on the banks that participated in this scheme. With the revelation of the rate manipulations, LIBOR was deemed to be an unreliable benchmark and a decision was made to phase out LIBOR entirely. One week and two-month dollar denominated LIBOR rates expired at the end of 2021. All other dollar denominated LIBOR rates are set to expire on June 30, 2023.

Further, the Federal Reserve Board of Governors, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency jointly stated that, given the risks of using an index that has, or will be discontinued, the agencies believe that "entering into new contracts that use USD LIBOR as a reference rate after December 31, 2021, would create safety and soundness risks and will examine bank practices accordingly." Accordingly, any institution that is jointly regulated by the Department and a federal agency that adopts the position outlined in the joint statement should already be using a new benchmark as of January 1, 2022, or risk being found to be operating in an unsafe and unsound manner.

This emergency adoption prohibits the use of LIBOR for new loans. The Department now adopts CME Term SOFR rates, as published by the CME Group Benchmark Administration Limited, as a replacement benchmark. See https://www.cmegroup.com/market-data/cme-group-benchmark-administration/term-sofr.html

CME Term SOFR is a forward-looking term rate, based upon the New York Federal Reserve Banks's Secure Overnight Financing Rate ("SOFR"), and administered by CME Group Benchmark Administration, Ltd. These forward-looking SOFR term rates are calculated by first projecting a possible path of overnight rates that is consistent with the observable averages implied by SOFR-based derivative contracts and then creating averages over standard tenors of that projected path of overnight rates. In projecting the path of overnight rates, CME Group uses a combination of one-month and three-month SOFR futures contracts to ensure that as many data points as possible are used to calculate the term structure.

Further, this emergency adoption also eliminates an obsolete index: the average cost of funds index for FSLIC institutions. This index has not been published for approximately 30 years, and there is no need to substitute a different one.

The emergency adoption of this regulation is necessary to authorize the use of CME Term SOFR as a replacement benchmark rate.

Signed copy filed with Department of State

Adrienne A. Harris
Superintendent of Financial Services

Dated: March 17, 2023