

November 1, 2021

The Honorable Sherrod Brown
Chairman
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Patrick Toomey
Ranking Member
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman Brown and Ranking Member Toomey:

We, the undersigned organizations, support federal legislation to address “tough legacy” contracts that currently reference LIBOR. We respectfully request the Committee move judiciously in enacting LIBOR legislation.

There are trillions of dollars of outstanding contracts, securities, and loans that use LIBOR for their interest rates but do not have appropriate contractual fallback language to facilitate the transition away from LIBOR when all US dollar tenors cease to be published in June 2023. These particular contracts are extremely difficult to amend and are known as “tough legacy.” Without federal legislation to address these contracts, investors, consumers, and issuers of securities may face years of uncertainty, litigation, and a change in value, creating ambiguity that would lead to a reduction in liquidity and an increase in volatility.

We do not take lightly the amending of contracts. However, in this unique, once-in-a-lifetime financial event, we find no other feasible option for remediation of these tough legacy contracts without the risk of significant uncertainty and the potential for market disruption. As such, we commend senators Tester and Tillis for working on legislation that:

- 1) Provides a solution for those contracts that have insufficient fallbacks and cannot otherwise be amended among the parties;
- 2) Limits the scope of legislation so there is no interference with any contracts that have effective fallback provisions, allows parties to opt-out of the legislation, and will not affect contracts related to new or future business;
- 3) Offers uniform, equitable treatment for all U.S. contracts that fall under the federal legislation; and
- 4) Creates a safe harbor from litigation for parties that are covered by the legislation and prevents otherwise inevitable litigation costs and gridlock.

In October, the five federal financial institution regulatory agencies released a joint statement on managing the LIBOR transition¹. They noted, “failure to adequately prepare for LIBOR’s discontinuance could undermine financial stability and institutions’ safety and soundness and create

¹ <https://www.ots.treas.gov/news-issuances/bulletins/2021/bulletin-2021-48a.pdf>

litigation, operational, and consumer protection risks.” We agree; with no realistic ability to amend tough legacy contracts we see a significant risk to the financial system and the underlying borrowers, investors, corporate issuers, and banks. In addition, at recent hearings before both the Senate Committee on Banking, Housing, and Urban Affairs and the House Financial Services Committee, Janet Yellen, Treasury Secretary, Jay Powell, Chair of the Federal Reserve, Randal Quarles, member of the Board of Governors of the Federal Reserve, Gary Gensler, Chair of the Securities and Exchange Commission, and Michael Hsu Acting Comptroller of the Currency, endorsed federal legislative action.

We thank Senator Tester, Senator Tillis, and the Committee for working towards a meaningful solution that offers fair, equitable and consistent treatment for all tough legacy contracts in support of the LIBOR transition. Thank you for your consideration and the opportunity to share our views on this matter. We look forward to working with Members of the Committee to move this important legislation forward.

Sincerely,

Securities Industry and Financial Markets Association (SIFMA)
Structured Finance Association
Institute of International Bankers
Consumer Bankers Association
Bank Policy Institute
Commercial Real Estate Finance Council (CREFC)
U.S. Chamber of Commerce, Center for Capital Markets Competitiveness
Mortgage Bankers Association
Government Finance Officers Association
The Loan Syndications and Trading Association (LSTA)
The International Swaps and Derivatives Association (ISDA)
Student Loan Servicing Alliance
Housing Policy Council
The Financial Services Forum
Investment Company Institute
The Loan Syndications and Trading Association (LSTA)
The Real Estate Roundtable
American Bankers Association
The American Council of Life Insurers (ACLI)
National Association of Corporate Treasurers

cc: Members of the Senate Committee on Banking, Housing, and Urban Affairs