Consumer Financial Protection Bureau

1700 G Street NW, Washington, DC 20552

April 28, 2023

Unofficial Redline of the 2023 LIBOR Transition Interim Final Rule

On April 28, 2023, the Consumer Financial Protection Bureau (Bureau) issued an interim final rule (2023 LIBOR Transition Interim Final Rule or rule) to revise several provisions of Regulation Z and its commentary to facilitate creditors' transition away from using LIBOR as an index for variable-rate consumer credit products. The Bureau is releasing this unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that the rule makes to Regulation Z's regulatory text and commentary.

The underlying (unmarked) text in this document reflects the existing text of the relevant provisions of Regulation Z and its commentary that are impacted by the rule. The changes that the rule makes to Regulation Z and its commentary are marked in red.

This redline is not a substitute for reviewing Regulation Z, its commentary, or the rule. If any conflicts exist between this redline and the text of Regulation Z, its commentary, or the rule, the documents published in the *Federal Register* are the controlling documents. The redline includes asterisks to indicate where it omits text from current Regulation Z or its commentary that the rule does not change.

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 a new paragraph (a)(28) to read as follows:

§ 1026.2 Definitions and rules of construction

(a) *Definitions.* * * *

(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, Pub. L. 117-103, division U.

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

2. 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 ~~spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee~~Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, 6-month, or ~~1-year~~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 ~~SOFR-based spread-adjusted index~~Board-selected benchmark replacement for consumer ~~products~~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

3. 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 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 ~~spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee~~Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, 6-month, or ~~1-year~~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 ~~SOFR-based spread-adjusted index~~Board-selected benchmark replacement for consumer ~~products~~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.

* * * * *

4. 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 ~~spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee~~Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, 6-month, or ~~1-year~~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 ~~SOFR-based spread-adjusted index~~Board-selected benchmark replacement for consumer ~~products~~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.

* * * * *

5. 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 ~~SOFR~~the Board-*

~~selected benchmark replacement for consumer loans~~ *in specified circumstances.* If a creditor is replacing a LIBOR index with the ~~index based on SOFR recommended by the Alternative Reference Rates Committee~~Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, 6-month, or ~~6~~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 ~~SOFR index~~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 ~~SOFR~~the Board-selected benchmark replacement for consumer loans in specified circumstances.* If a creditor is replacing a LIBOR index with ~~an index based on SOFR recommended by~~ the ~~Alternative Reference Rates Committee~~Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, 6-month, or ~~6~~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 ~~SOFR index~~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 non-variable 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, ~~or~~ 6-month, or 12-month U.S. Dollar LIBOR index to the ~~spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee~~Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, 6-month, or ~~6~~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. ~~The~~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.

* * * * *

Section 1026.40—Requirements for Home-Equity Plans

* * * * *

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 (~~f)(3)(ii)(~~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 ~~spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee~~Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, 6-month, or ~~1-year~~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 ~~SOFR-based spread-adjusted index~~Board-selected benchmark replacement for consumer ~~products~~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 (~~f)(3)(ii)(~~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 (~~f)(3)(ii)(~~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~~, considering~~. 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. ~~The Bureau has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by~~ By operation of the Adjustable Interest Rate (LIBOR) Act, Pub. L. 117-103, division U, and the ~~Alternative Reference Rates Committee~~ Board's implementing regulation, 12 CFR part 253, the Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, ~~or~~ 6-month, or 12-month U.S. Dollar LIBOR ~~indices have~~index has historical fluctuations ~~that~~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 ~~to those of the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices respectively.~~" standard for the LIBOR index tenor it replaces, and no further determination is required. In order to use ~~this SOFR-based spread-adjusted index~~the Board-selected benchmark replacement for consumer ~~products~~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 ~~SOFR-based spread-adjusted index~~Board-selected benchmark replacement for consumer ~~products~~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. ~~The~~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 ~~spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee~~Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, 6-month, or ~~1-year~~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 ~~SOFR-based spread-adjusted index~~Board-selected benchmark replacement for consumer ~~products~~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 ~~SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee~~Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, 6-month, or ~~6~~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~~, considering~~. 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. ~~The Bureau has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by~~ By operation of the Adjustable Interest Rate (LIBOR) Act, Pub. L. 117-103, division U, and the ~~Alternative Reference Rates Committee~~Board's implementing regulation, 12 CFR part 253, the Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, ~~or~~ 6-month, or 12-month U.S. Dollar LIBOR ~~indices have~~index has historical fluctuations ~~that~~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 ~~to those of~~" standard for the ~~1-month, 3-month, or 6-month U.S. Dollar~~ LIBOR ~~indices respectively~~index it replaces, and no further determination is required. In order to use ~~this SOFR-based spread-adjusted index~~the Board-selected benchmark replacement for consumer ~~products~~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 ~~SOFR-based spread-adjusted index~~Board-selected benchmark replacement for consumer ~~products~~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 ~~SOFR-based spread-adjusted index~~Board-selected benchmark replacement for consumer ~~products~~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. ~~The~~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 ~~substantial~~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 ~~SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee~~Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, 6-month, or ~~6~~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.

*   *   *   *   *

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

*   *   *   *   *

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 (~~b)(7)(~~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 (~~b)(7)(~~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 ~~spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee~~Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, 6-month, or ~~1-year~~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 ~~SOFR-based spread-adjusted index~~ Board-selected benchmark replacement for consumer ~~products~~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 (~~b)(7)(~~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 (~~b)(7)(~~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~~, considering~~. 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. ~~The Bureau has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by~~ By operation of the Adjustable Interest Rate (LIBOR) Act, Pub. L. 117-103, division U, codified at 12 U.S.C. 5803(e)(2), and the ~~Alternative Reference Rates Committee~~ Board's implementing regulation, 12 CFR 253.4(b)(2), the Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, ~~or~~ 6-

month, or 12-month U.S. Dollar LIBOR ~~indices have~~index has historical fluctuations ~~that~~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~~ to those of~~" standard for the ~~1-month, 3-month, or 6-month U.S. Dollar~~ LIBOR ~~indices respectively~~index it replaces, and no further determination is required. In order to use ~~this SOFR-based spread-adjusted index~~the Board-selected benchmark replacement for consumer ~~products~~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 ~~SOFR-based spread-adjusted index~~Board-selected benchmark replacement for consumer ~~products~~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. ~~The~~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 ~~substantial~~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 ~~SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee~~Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, 6-month, or ~~1-year~~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 ~~SOFR-based spread-adjusted index~~ Board-selected benchmark replacement for consumer ~~products~~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 ~~SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee~~Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, 6-month, or ~~6~~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~~, considering~~. 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. ~~The Bureau has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by~~ By operation of the Adjustable Interest Rate (LIBOR) Act, Pub. L. 117-103, division U and the ~~Alternative Reference Rates Committee~~Board's implementing regulation, 12 CFR part 253, the Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, ~~or~~ 6-month, or 12-month U.S. Dollar LIBOR ~~indices have~~index has historical fluctuations ~~that~~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 ~~to those of~~" standard for the ~~1-month, 3-month, or 6-month U.S. Dollar~~ LIBOR ~~indices respectively~~index it replaces, and no further determination is required. In order to use ~~this SOFR-based spread-adjusted index~~the Board-selected benchmark replacement for consumer ~~products~~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 ~~SOFR-based spread-adjusted index for consumer products~~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 ~~SOFR-based spread-adjusted index~~Board-selected benchmark replacement for consumer ~~products~~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. ~~The~~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 ~~substantial~~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 ~~SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee~~Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, 6-month, or ~~6~~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.

*   *   *   *   *

Section 1026.59—Reevaluation of Rate Increases

*   *   *   *   *

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~~, considering~~. 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~~. The Bureau also has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by~~, and no further determination is required. By operation of the Adjustable Interest Rate (LIBOR) Act,

Pub. L. 117-103, division U, codified at 12 U.S.C. 5803(e)(2), and the ~~Alternative Reference Rates Committee~~Board's implementing regulation, 12 CFR 253.4(b)(2), the Board-selected benchmark replacement for consumer ~~products~~loans to replace the 1-month, 3-month, ~~or~~ 6-month, or 12-month U.S. Dollar LIBOR ~~indices have~~index has historical fluctuations ~~that are~~ substantially similar to those of the ~~1-month, 3-month, or 6-month U.S. Dollar LIBOR indices respectively.~~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).

* * * * *