

## FinReg Round-Up

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The second quarter of 2021 has brought encouraging news about the COVID-19 pandemic, with vaccination rates growing day by day and infection rates in the United States on a downward trend. Q2 also brought more developments in the move toward the replacement of LIBOR (the London Interbank Offered Rate) as the



benchmark interest rate for financing agreements around the world, new clarity from the Federal Reserve Board on six long-standing regulations, and a much-anticipated ruling from the Second Circuit in litigation over the Office of the Comptroller of the Currency's fintech charter program.

## Gov. Cuomo Signs New York State LIBOR Transition Bill Into Law

With the U.S. Dollar London Interbank Offered Rate (USD LIBOR) expected to cease in mid-2023, New York Gov. Andrew Cuomo signed legislation on April 6 addressing the discontinuation of the dying interest rate benchmark.

The final version of the law, [Senate Bill S297B/Assembly Bill 164B](#), seeks to protect New York contract holders against breaches related to the cessation of USD LIBOR. The Alternative Reference Rates Committee (ARRC), a group of private-market participants convened by the Federal Reserve Board and Federal Reserve Bank of New York, promoted the legislation, which advocates believe will aid in the transition away from the benchmark and greatly reduce market uncertainty throughout the process.

Under the new law, contract parties are prevented from breaking contractual obligations or declaring breach of contract related to the discontinuance of USD LIBOR or based on nonacceptance of the legislation's recommended benchmark replacement. The law also establishes that the ARRC's recommended replacement, based on the Secured Overnight Financing Rates (SOFR), should be considered a reasonable commercial substitute for USD LIBOR, and that it constitutes a substantially equivalent benchmark. (Read our alert on the most recent developments in the move to SOFR [here](#).)

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The law will have no impact on contracts that have existing language related to the discontinuance of USD LIBOR, or that already establish an alternative rate not based on USD LIBOR in response to the benchmark's

cessation, so it is not expected to present any unforeseen challenges for the bulk of New York law-governed bilateral and syndicated business loans, which often specify alternative base rates such as prime or federal fund rates.

## Federal Reserve Board Publishes New FAQs on Six Regulations To Increase Transparency

The Federal Reserve Board unveiled new frequently asked questions (FAQs) regarding six long-standing regulations this past spring. According to the March 31 statement issued by the board, the FAQs "are intended to increase transparency and enhance accessibility to Board and Board staff legal interpretations."

The FAQs address a number of existing interpretations for each regulation that were compiled over time via board orders, requestor letters and similar board communications, as well as inquiries not previously available in writing. The specific regulations addressed by the FAQs are:

- **Regulation H:** Membership of State Banking Institutions in the Federal Reserve System
- **Regulation K:** International Banking Operations
- **Regulation L:** Management Official Interlocks
- **Regulation O:** Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks

- **Regulation W:** Transactions Between Member Banks and Their Affiliates
- **Regulation Y:** Bank Holding Companies and Change in Bank Control

Exploring the practical reach of each regulation, the FAQs clarify the kinds of institutions each regulation applies to, provide guides to general provisions and prohibitions, and list permissible activities and transactions based on accepted interpretations of the regulatory language. Other issues addressed include membership qualifications for federal partnerships, how to establish what constitutes a "branch" within a state banking institution and associated entitlements, and shareholder rights and requirements for financial holding companies.

The current FAQs will be updated regularly, and additional FAQs will be made available periodically through the board's website, the board said.

## Second Circuit Vacates Ruling Blocking OCC's Fintech Charter Program

The New York State Department of Financial Services (NYDFS) has no legal standing to sue the Office of the Comptroller of the Currency (OCC) over its fintech charter program, a Second U.S. Circuit Court of Appeals panel ruled on June 3.

NYDFS alleged no actual or imminent alleged harm due to the program because, so far, no fintech firm has received a federal banking license through the program or even applied for one, the panel pointed out. "At least until a non-depository fintech that [NYDFS] currently regulates—or would otherwise regulate—decides to

apply for a [special-purpose national bank] charter, this alleged assessment loss will remain purely 'conjectural or hypothetical,' rather than 'imminent' as the Constitution requires," the panel said in its decision in *Lacewell v. Office of the Comptroller of the Currency*.

NYDFS sued OCC in 2018 to block its new charter program for fintech firms to create special-purpose national banks that do not take deposits. The agency argued, among other things, that it would lose revenue acquired through annual assessments levied on the institutions it regulates.

A New York federal district court blocked the program, and the OCC appealed to the Second Circuit. The federal appeals court vacated the ruling and remanded with instructions to dismiss without prejudice. The Second Circuit refused to address the merits of the lower court's holding that the "business of banking" under the National Bank Act unambiguously requires the receipt of deposits.

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## Related Professional

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