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Insights

Indiana Senate Bill Would Replace LIBOR When Necessary

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Trillions of dollars are tied up in lending contracts that rely on the London Interbank Offered Rate ("LIBOR") as their benchmark rate. On June 30, 2023, LIBOR will no longer be published in any capacity.[1] Many LIBOR-based contracts contain inadequate provisions, or none at all, to deal with the discontinuation of LIBOR ("Vulnerable Contracts"). Lenders and industry leaders are justifiably concerned that LIBOR discontinuation will lead to market instability leading up to the LIBOR discontinuation date, and a court-clogging number of lawsuits dealing with Vulnerable Contracts following discontinuation.

Indiana lawmakers are proposing legislation to address the problem. Indiana Senate Bill 371 ("S.B. 371") provides a statutory mechanism by which Vulnerable Contracts can "fallback" to other benchmark rates.[2] The primary fallback benchmark rate contemplated under S.B. 371 is the Secured Overnight Financing Rate (commonly referred to as "SOFR") published by the Federal Reserve Bank of New York. S.B. 371 is modeled after legislation that has been enacted in New York[3] (and endorsed by the Alternative Reference Rates Committee)[4] and subsequently adopted in Alabama.[5]

Similar legislation has also been proposed at the federal level[6] which would preempt state laws, including S.B. 371. The federal legislation retains the core structure and intent of the aforementioned state laws, but a considerable portion of the wording is different. A notable difference between the state and federal versions is that the federal version provides a section on tax treatment, ensuring that the transition from LIBOR to a replacement rate via the statute is not considered a sale, exchange, or other disposition of property for purposes of Section 1001 of the IRS Code.

Indiana's S.B. 371 passed its third reading in the Senate on January 25, 2022 and was referred to the House of Representatives the following day. Stay tuned for updates on S.B. 371 and its federal counterpart from Krieg DeVault LLP.

[1] See https://www.jpmorgan.com/solutions/cib/markets/leaving-libor; accessed Jan. 27, 2022
[2] See http://iga.in.gov/legislative/2022/bills/senate/371; accessed Jan. 27, 2022
[3] Article 18-C of the New York General Obligations Law, §18-400 et seq.
[4] See https://www.newyorkfed.org/arrc/publications/legislation; accessed Jan. 27, 2022
[5] Ala. Code §5-28-1
[6] H.R. 4616; see https://www.congress.gov/bill/117th-congress/house-bill/4616?s=1&r=45; accessed Jan. 27, 2022