Regulatory Capital Rule FAQs on LIBOR transition

FAQ Topics:

1) *Redemption or reissuance of regulatory capital instruments*

   Question: Would replacing or amending the terms of a capital instrument to transition from the London Interbank Offered Rate (LIBOR) to another reference rate or rate structure be considered an issuance of a new instrument under the capital rule (12 CFR part 324) for purposes of the eligibility criteria for regulatory capital?

   Answer: The Federal Deposit Insurance Corporation (FDIC) does not consider the replacement or amendment of a capital instrument that solely replaces a reference rate linked to LIBOR with another reference rate or rate structure to constitute an issuance of a new capital instrument for purposes of the capital rule. If changes in the terms of the replacement or amended capital instrument solely relate to the adoption of the new reference rate or rate structure, and there are no substantial differences from the original instrument from an economic perspective, the replacement or amended instrument would not be considered a new instrument for purposes of the eligibility criteria for regulatory capital. In this case, for purposes of the capital rule, the replacement or amended instrument would retain the maturity of the original instrument.

   An FDIC-supervised institution that replaces or amends the terms of a capital instrument to transition from LIBOR should support its determination with an appropriate analysis that demonstrates that the replacement or amended instrument is not substantially different from the original instrument from an economic perspective. The FDIC may request that the FDIC-supervised institution provide this analysis. Considerations for determining that a replacement or amended capital instrument is not substantially different from the original instrument from an economic perspective could include, but are not limited to, whether the replacement or amended instrument has amended terms beyond those relevant to implementing the new reference rate or rate structure.

2) *Regulatory capital instruments with changing distribution rates*

   Question: For purposes of the eligibility criteria for regulatory capital, would replacing or amending the terms of a capital instrument to transition from LIBOR to another reference rate or rate structure be considered creating an incentive to redeem the instrument under the capital rule (12 CFR part 324)?

   Answer: The FDIC does not consider the replacement or amendment of a capital instrument that solely replaces a reference rate linked to LIBOR with another reference rate or rate structure to constitute creating an incentive to redeem, as long as the replacement or amended capital instrument is not substantially different from the original instrument from an economic perspective. For example, amending the credit spread solely to reflect the difference in basis between LIBOR and the replacement reference rate and not adjusting for changes in the credit quality of the issuer would not result in creating an incentive to redeem the capital instrument.

An FDIC-supervised institution that replaces or amends the terms of a capital instrument to transition from LIBOR should support its determination with an appropriate analysis that demonstrates that the replacement or amended instrument is not substantially different from the original instrument from an economic perspective. The FDIC may request that the FDIC-supervised institution provide this analysis. Considerations for determining that a replacement or amended capital instrument is not substantially different from the original instrument from an economic perspective could include, but are not limited to, whether the replacement or amended instrument has amended terms beyond those relevant to implementing the new reference rate or rate structure.