VIA EMAIL

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Majority Leader Andrea Stewart-Cousins
172 State Street
Capitol Building, Room 330
Albany, NY 12247

Speaker Carl E. Heastie
Legislative Office Building 932
Albany, NY 12248

Re: Support for legislation to protect consumers in the transition away from the London Inter-Bank Offered Rate (LIBOR), FY 2022 NYS Executive Budget, TED Part PP

Dear Governor Cuomo, Majority Leader Stewart-Cousins, and Speaker Heastie:

The undersigned groups write in support of provisions included in Part PP of the Transportation, Economic Development and Environmental Conservation (TED), Article VII Legislation in the FY 2022 New York State Executive Budget, and its amendments.[1] The proposal facilitates the orderly transition of financial contracts based on the London Inter-Bank Offered Rate (LIBOR). This legislation provides critical consumer protections by offering certitude to borrowers whose contracts fail to articulate a path forward after LIBOR's cessation and by creating key incentives for industry to adopt the Alternative Reference Rate Committee's (ARRC) recommended replacement rate for LIBOR, the Secured Overnight Financing Rate (SOFR), as a fallback for existing LIBOR-based consumer contracts.

An estimated $1.2 trillion of variable-rate consumer debt owed by millions of Americans references LIBOR.[2] These loans were taken on so that people across the country, including potentially millions in New York, could pursue the promise of a college degree, attain the dream of homeownership, or start a small business in their community. But because of gamesmanship by industry, the financial footing of borrowers who happen to owe on LIBOR-based debt could

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[1] *FY 2022 Executive Budget Legislation*, N.Y. (2022), https://www.budget.ny.gov/pubs/archive/fy22/ex/fy22bills.html.

[2] Alt. Ref. Rates Comm., *ARRC Consultation on Spread Adjustment Methodologies for Fallbacks in Cash Products Referencing USD LIBOR*, Fed. Reserve Bank of N.Y., (Jan. 21, 2020), at 23, https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Spread_Adjustment_Consultation.pdf.

now be at risk.[3] In particular, while LIBOR once served as a benchmark for roughly $800 trillion of financial assets, it came to light in 2012 that some of the largest financial institutions in the world were criminally manipulating the rate for their own gain.[4] These crimes had ripple effects that reached far beyond investment banks' trading desks. For individual borrowers nationwide, LIBOR has long determined how much they will owe on a mortgage, a student loan, or a small business loan each month, and—as a consequence—whether their household budget will balance after a payment on that loan is made.

As the world approaches LIBOR's upcoming cessation and prepares to move outstanding loans to new reference rates, experts predict that industry will seek to offload costs associated with this change onto the backs of borrowers owing on LIBOR-based debt.[5] The provisions included in the Governor's FY2022 budget would help alleviate these concerns.

This legislation requires that contracts without a replacement mechanism for LIBOR adopt the "recommended benchmark replacement" based on SOFR and creates a safe harbor from litigation for note holders to select SOFR as a replacement rate in instances where they are given discretion to choose one, among other important technical fixes. The legislation refers to the recommendation of ARRC,[6] the group of industry participants and consumer advocates convened by the Federal Reserve Board and Federal Reserve Bank of New York to select and promote the adoption of a replacement for LIBOR. The ARRC selected SOFR as its recommended replacement for LIBOR in 2017.[7] Unlike LIBOR and many of its proposed replacements, SOFR is based on *actual transaction data* in a deep and liquid market,[8] making it transparent and unlikely to be manipulated.

As has been noted elsewhere, the transition away from LIBOR is one that consumers in New York State and nationwide neither caused nor requested.[9] Unless action is taken to protect these borrowers, it could also be one that they end up paying for. That is why it is imperative for New York State to act quickly to eliminate ambiguity and guide the market toward the safest

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[3] *See, e.g.*, Ben Kaufman, *Are Millions of Student Loan Borrowers About to Pay for Banks' LIBOR Fraud?*, Student Borrower Protection Ctr. (Mar. 6, 2020), https://protectborrowers.org/are-millions-of-student-loan-borrowers-about-to-pay-for-banks-libor-fraud/.

[4] David Hou & David Skeie, *LIBOR: Origins, Economics, Crisis, Scandal, and Reform*, Fed. Reserve Bank of N.Y. (Mar. 2014), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr667.pdf

[5] Kaufman, *supra* note 3; *see also* Matt Levine, *The LIBOR Change is Coming*, Bloomberg (Aug. 27, 2019), https://www.bloomberg.com/opinion/articles/2019-08-27/the-libor-change-is-coming?sref=QRPBHrH8 (stating "Libor transition is going to be an expensive and difficult process for the banks but I have a lot of faith that they'll find a way to make it up to themselves.") .

[6] Alt. Ref. Rates Comm., *Proposed Legislative Solution to Minimize Legal Uncertainty and Adverse Economic Impact Associated with LIBOR Transition*, Fed. Reserve Bank of N.Y. (2020), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC-Proposed-Legislative-Solution.pdf.

[7] Joshua Frost, *Introducing the Secured Overnight Finance Rate (SOFR)*, Fed. Reserve Bank of N.Y. (Nov. 2, 2017), https://www.newyorkfed.org/medialibrary/media/newsevents/speeches/2017/Frostpresentation.pdf.

[8] *Id*.

[9] *Letter to ARRC Chair Thomas G. Wipf*, Student Borrower Protection Ctr. (March 6, 2020), https://protectborrowers.org/wp-content/uploads/2020/03/LIBOR-Spread-Adjustments-Coalition-Letter.pdf.

and most desirable alternative for LIBOR: SOFR.[10] This legislation is an important first step toward ensuring that borrowers are protected following LIBOR's cessation.

For these reasons, we support the language included in this year's Executive Budget and urge the Senate and the Assembly to include the same language in their one-house budgets, and ultimately include it as part of New York's final FY2022 budget. For more information or questions, please contact Chuck Bell of Consumers Reports (chuck.bell@consumer.org) or Kirsten Keefe of Empire Justice Center (kkeefe@empirejustice.org).

Sincerely,

New Yorkers for Responsible Lending
Americans for Financial Reform Education Fund
Student Borrower Protection Center
National Consumer Law Center, on behalf of our low-income clients

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[10] *Id*. at 5 (debunking flawed arguments against SOFR's adoption); *see also* David Bowman et al, *How Correlated is LIBOR with Bank Funding Costs?*, Fed. Reserve Bank of N.Y. (June 29, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/how-correlated-is-libor-with-bank-funding-costs-20200629.htm.