

# Buchalter

## CLIENT ALERT

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### **Freddie Mac and Fannie Adopt New ARRC Recommended Fallback LIBOR Language for Residential ARM Loans**

Today, the Alternative Reference Rates Committee (ARRC) released "ARRC RECOMMENDATIONS REGARDING MORE ROBUST LIBOR FALLBACK CONTRACT LANGUAGE FOR NEW CLOSED-END, RESIDENTIAL ADJUSTABLE RATE MORTGAGES" (Recommendations) setting forth recommended fallback language in closed-end ARM residential loan notes to address the use of LIBOR as an index and when and how it can be replaced. Freddie Mac and Fannie Mae then announced that they will use the recommended language for new U.S. Dollar denominated closed-end, residential ARM loans. Links to the published Recommendations and to Freddie Mac and Fannie Mae's announcements can be found below.

At present, most current ARM residential loan notes state that "if the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information." Such current notes do not define "is no longer available" or "based upon comparable information."

The new ARRC recommendations provide more detailed language regarding when LIBOR can be replaced by defining "unavailable" as meaning:

- (i) the Administrator [of LIBOR] has permanently or indefinitely stopped providing the Index to the general public; or
- (ii) the Administrator or its regulator issues an official public statement that the Index is no longer reliable or representative.

ARRC then recommends that if LIBOR is replaced, the new index be selected in the following manner:

- (1) If a replacement index has been selected or recommended for use in consumer products, including residential adjustable-rate mortgages, by the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, or a committee endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York at the time of a Replacement Event, the Note Holder will select that index as the Replacement Index.

- (2) If a replacement index has not been selected or recommended for use in consumer products under Section (G)(1) at the time of a Replacement Event, the Note Holder will make a reasonable, good faith effort to select a Replacement Index and a Replacement Margin that, when added together, the Note Holder reasonably expects will minimize any change in the cost of the loan, taking into account the historical performance of the Index and the Replacement Index.

This language is more precise than the language in most current notes.

Buchalter is a leading firm representing financial institutions, including in complex commercial transactions and in mortgage lending. For further information on these LIBOR Recommendations or to discuss other LIBOR issues, please contact Mike Flynn or Jason Goldstein, Co-Chairs of Buchalter's Mortgage Banking Practice Group, at [mflynn@buchalter.com](mailto:mflynn@buchalter.com) or [jgoldstein@buchalter.com](mailto:jgoldstein@buchalter.com).

[ARRC Recommendations](#)

[Fannie Mae Announcement](#)

[Freddie Mac Announcement](#)



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