SBA Procedural Notice

TO: All SBA Employees and 7(a) Lenders

CONTROL NO.: 5000-846399

SUBJECT: Transition from LIBOR as a Base Rate

EFFECTIVE: April 19, 2023

The purpose of this notice is to set forth the SBA policy for transitioning 7(a) loans with the London Interbank Offered Rate (LIBOR) Base Rate to either Prime or the SBA Optional Peg Rate. The United Kingdom Financial Conduct Authority will phase-out LIBOR by June 30, 2023. To provide certainty to SBA Lenders and Borrowers in advance of the June 2023 deadline, SBA published the Regulatory Reform Initiative Final Rule (Rule) on June 30, 2022, amending 13 CFR 120.214 on interest rates by removing the One Month LIBOR plus 3 percentage points (LIBOR Base Rate) as an optional base rate for variable rate 7(a) loans with initial disbursement dates on or after August 1, 2022. See 87 FR 38900 (June 30, 2022).

The Rule also "recommended that Lenders review their loan documents to determine if the documents provide a fallback base rate (i.e., Prime or the Optional Peg Rate) without having to modify the loan documents." If there was no flexibility, the Rule instructed Lenders "to work with Borrowers to modify loan documents on an individual basis" for any outstanding loans using the LIBOR Base Rate before its sunset. For loans with a variable interest rate, there are currently two acceptable base rates: the Prime Rate and the SBA Optional Peg Rate.[1] 13 CFR 120.214.

For all 7(a) loans:

The Lender must notify the appropriate Commercial Loan Servicing Center (CLSC) of the change in base rate. Once notified, SBA will record the change in SBA's internal chron system for SBA to use as needed (e.g., in processing purchases or liquidation). Note, however given current system limitations, that SBA's E-Tran Servicing will not reflect the change in the Base Rate Source and will not update to show the correct Base Rate or Borrower's Interest Rate. Further, SBA expects that once a new base rate is effective, that Lender will use the new base rate in collecting borrower payments and in Form 1502 reporting submitted to the FTA.

[1] Per Federal Register Notice published on April 3, 2023, the optional peg rate "will be 3.88 percent for the April-June quarter of FY 2023". 88 FR 19706 (April 3, 2023).

For 7(a) loans sold on the secondary market:

Loans sold on the secondary market also require prior written Registered Holder consent to modify base rates contained in borrowers' Notes. For secondary market loans using the LIBOR Base Rate where the guaranteed interests are not part of a Pool, Lenders must follow the payment modification process set forth in Article III, Section 3.8 (e) of SBA Form 1086, "Secondary Participation Guaranty Agreement," which includes obtaining prior written Registered Holder approval. Lenders may request a new base rate of either the Prime Rate or the SBA Optional Peg Rate. The proposed modification must be forwarded by the Lender to Fiscal Transfer Agent (FTA) by June 1, 2023, at fta@sba.gov. The Lender must notify the appropriate CLSC of the change in base rate upon receipt of Registered Holder consent from FTA. If a Lender does not submit a payment modification to FTA by June 1, 2023, FTA will automatically change (without Lender request) the base rate on secondary market records from LIBOR to Prime, effective July 1, 2023, with no change to the spread over the base rate or frequency of interest rate adjustment.

For secondary market loans using the LIBOR Base Rate where the guaranteed interests are part of a Pool, pursuant to Article V, Section 5.4 (d) of SBA Form 1086, FTA will automatically change without Lender request the base rate on secondary market records from LIBOR to Prime, effective July 1, 2023, with no change to the spread over the base rate or frequency of interest rate adjustment. FTA may provide written confirmation of guaranteed interests that are part of Pools. The base rates for SBA LIBOR Pools will also change to Prime, effective July 1, 2023, with no change to the spread over the base rate or frequency of interest rate adjustment.

Lenders are prohibited from the unilateral repurchase of guaranteed interests from the secondary market without the prior written consent of SBA. If a borrower's ability to remain in business is contingent upon changes to terms and conditions not permitted by this policy, then Lenders may request emergency repurchase authority pursuant to Article VII, Section 7.6 of Form 1086.

For 7(a) loans that are not sold on the secondary market:

In the event of a delinquency, SBA will follow its practice of calculating interest due to the Lender based on 1502 reports and Lender transcripts.

Questions

Questions concerning non-secondary market loans may be directed to the Lender Relations Specialist in the local SBA Field Office.

Questions concerning secondary market loans may be directed to Marybeth Kerrigan at Mary.Kerrigan@sba.gov.

Dianna L. Seaborn
Director
Office of Financial Assistance