

# Rules and Regulations

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 120

RIN 3245-AF83

#### Business Loan Program Regulations: Incorporation of London Interbank Offered Rate (LIBOR) Base Rate and Secondary Market Pool Interest Rate Changes

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Interim final rule.

**SUMMARY:** To address extraordinary market conditions limiting credit availability for small businesses, SBA is issuing an interim final rule to make adjustments on an emergency basis to certain of its regulations in order to make the secondary market for loans guaranteed under section 7(a) of the Small Business Act (7(a) loans) more efficient with regard to loan pricing and the formation of secondary market loan pools. Specifically, the interim final rule will permanently add an additional base rate of LIBOR for lenders to use when pricing 7(a) loans, and will allow for secondary market loan pools to be formed with weighted average coupon rates. This interim final rule is necessary to help ensure continued availability of capital to small businesses and to improve liquidity in and efficiency of the secondary market.

**DATES:** This rule is effective November 13, 2008. Comments on the interim final rule must be received on or before December 15, 2008.

**ADDRESSES:** You may submit comments, identified by RIN number 3245-AF83 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Grady Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 3rd

Street, SW., 8th Floor, Washington, DC 20416.

- *Hand Delivery/Courier:* Grady Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC 20416. All comments will be posted on <http://www.Regulations.gov>. If you wish to include within your comment, confidential business information (CBI) as defined in the Privacy and Use Notice/User Notice at <http://www.Regulations.gov> and you do not want that information disclosed, you must submit the comment by either Mail or Hand Delivery and you must address the comment to the attention of Grady Hedgespeth, Director, Office of Financial Assistance. In the submission, you must highlight the information that you consider is CBI and explain why you believe this information should be held confidential. SBA will make a final determination, in its discretion, of whether the information is CBI and, therefore, will not be published.

**FOR FURTHER INFORMATION CONTACT:** Grady Hedgespeth, Director, Office of Financial Assistance, 202-205-7562, or [grady.hedgespeth@sba.gov](mailto:grady.hedgespeth@sba.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background Information

In October 2008, the President's Working Group on Financial Markets announced that the U.S. government would deploy all of its tools in a strategic and collaborative manner to address the current instability in the financial markets and mitigate the risks that instability poses for broader economic growth. Subsequently, the U.S. Treasury Department, the Federal Deposit Insurance Corporation, and the Federal Reserve announced actions to help protect the U.S. economy, to strengthen public confidence in our financial institutions, and to foster the robust functioning of our credit markets.

The U.S. Small Business Administration is issuing this Interim Final Rule to address the impact of the current economic situation on the Agency's lending partners and the small businesses that participate in the Agency's lending programs. The Agency is issuing these regulations with the goals of helping to ensure continued access to capital by America's small businesses and increasing the liquidity

in the market for SBA-backed secondary market securities.

Under SBA's 7(a) loan guaranty program, borrowers are able to obtain partially guaranteed loans from banks, small business lending companies, credit unions, and other participating financial institutions. In order to make new loans, our lending partners must have the tools they need to be able to afford to deliver capital to small businesses. In recent months, SBA's programs have been impacted by the broader credit market disruptions. Many SBA lenders are having immediate liquidity and profitability challenges, causing small businesses to be less able to access new sources of credit. This problem has led to sharp declines in SBA guaranteed lending to small businesses and severely limited activity in buying and selling SBA loans and loan pools by secondary market investors.

For many SBA lenders, the cost of funds or internally allocated cost of funds is based partially or entirely on the London Interbank Offered Rate (LIBOR). Under SBA regulations, however, the interest rate on 7(a) loans is typically based on the Prime rate. Historically, there has been an approximate 300 basis point spread between short-term LIBOR rates and the Prime rate. In recent weeks, however, this spread has sharply declined and on some days LIBOR exceeded the Prime rate. The declining Prime and rising LIBOR rates have largely eliminated profit margins for SBA lending institutions that borrow funds at LIBOR rates and lend at Prime rates. Under these circumstances, these lenders are reducing the number of 7(a) loans they will make.

Additionally, lenders who participate in secondary market activities are impacted by the mismatch between Prime and LIBOR rates again when trying to sell loans to investors. Usually, over 40% of SBA loan guarantee dollars are sold into the secondary market, which provides a critical source of liquidity for SBA lenders, particularly non-depository lenders. Investors willing to buy SBA loans in the secondary market also frequently use LIBOR rates to make investment decisions. The mismatch between the Prime and LIBOR rates may be a limiting factor and, with the current turmoil, may limit the number of

investors willing to buy SBA loans in the secondary market. This secondary market situation reduces the demand for SBA guaranteed loans which results in lower secondary market prices and a severe lack of liquidity for lenders that typically sell their loans in the secondary market.

Due to the change in the relationship between LIBOR and Prime, many lenders today do not have access to funds at a cost that justifies originating new 7(a) loans. At the same time, under current conditions, SBA guaranteed loans cannot easily or quickly be converted to cash in the secondary market. Consequently, some lenders are facing an immediate liquidity crisis and will not be able to make loans or continue their SBA business lending without immediate action. For small businesses, this means the capital needed to start, maintain or expand operations will be more difficult to obtain.

For these reasons, SBA is proposing two regulatory changes to address problems that are impeding lending partners from originating new 7(a) loans at this time. SBA believes that adjustments to certain interest rates set out in SBA regulations for SBA guaranteed loans can help solve short and long run problems impeding small businesses from having access to capital through SBA's guaranteed loan program. These interest rate adjustments include: allowing the interest rate on 7(a) loans to be based on a LIBOR rate and allowing SBA pool assemblers to create Weighted Average Coupon (WAC) pools under SBA's Secondary Market Guarantee Program. These changes will help small businesses over the short term to manage through the current economic situation by facilitating a continued flow of capital and over the long term by structuring SBA's guaranteed loan program to include current market indices making it more attractive for lenders and secondary market investors to participate. SBA currently collects data on rates set for individual 7(a) loans. SBA will monitor the LIBOR rates offered to borrowers and compare them with Prime rates until the base rates stabilize.

Specific changes included in this interim final rule are as follows:

(1) Including the London Interbank Offered Rate (LIBOR) as an additional base interest rate by changing 13 CFR 120.214(c) to allow lenders to price 7(a) loans based on a spread over the 30 day LIBOR in addition to the currently allowable Prime rate and Optional Peg rate.

(2) Allowing Weighted Average Coupon (WAC) Pools by changing the

regulations governing the allowable interest rate on a pool. SBA policy guidance is being revised to outline procedures and guidelines for these WAC pools.

## II. Section by Section Analysis

*Section 120.214.* This regulation is being revised to permit SBA lenders the flexibility to price 7(a) loans using the thirty-day (1-month) LIBOR plus 300 basis points as a base rate. Specifically, Section 120.214(c) is being amended to include the thirty-day (1-month) LIBOR rate plus 300 basis points as a base rate, in addition to the existing base rates which are the Prime rate and the SBA Optional Peg rate. For many SBA lenders, costs of funds or internal costs of funds are partially or entirely tied to LIBOR and they use this rate as a standard index for borrowing and lending. However, they are only permitted to lend at Prime rates or the Optional Peg Rate for 7(a) loans. This mismatch between funding and lending rates has become particularly acute in the current economic environment where LIBOR has increased while Prime has remained constant or declined—effectively making the cost of funding a loan higher and dramatically reducing or eliminating the profitability of making a loan. This imbalance is limiting small businesses' access to capital and the financing needed to sustain and grow their businesses.

In the short term, allowing LIBOR index flexibility will encourage lenders to continue to participate in or re-enter the SBA market. In the long term, allowing this option keeps SBA lending aligned with current market practices by expanding into a broader range of resources from the global financial marketplace, where LIBOR is a standard interest rate base. Historically, Prime and LIBOR rate shifts have moved correspondingly, with LIBOR approximately 300 basis points below Prime rates. Accordingly, the LIBOR base rate for 7(a) loans is being established as the thirty-day (1-month) LIBOR index plus 300 basis points in order to roughly equate Prime and LIBOR rates. The thirty-day (1-month) LIBOR index was selected as it historically most closely tracks Prime rates in terms of its movements and variability. SBA currently collects data on rates set for individual 7(a) loans. SBA will monitor the LIBOR rates offered to borrowers and compare them with Prime rates until the base rates stabilize. In addition, maximum interest rate spreads over the base rates will remain in place, ensuring borrowers receive reasonable rates that are largely driven by market competition.

*Sections 120.600, 120.610(e) and Section 120.611(a).* The specific changes to these sections are described in more detail below. The overall reason for the changes to these sections is to allow weighted average coupon (WAC) pools. SBA loans are usually sold in the secondary market by grouping them into pools. Currently, the interest rate on the pool is the lowest net rate of all of the loans in a given pool. WAC pools will allow loans with approximately the same net rates to be grouped together, and the interest rate on the pool will be the weighted average of the net rates of the loans in the pool. WAC pools will be easier for pool assemblers to create than traditional pools by providing additional flexibility in grouping loans into pools for sale. This flexibility will help expand the secondary market by permitting pool assemblers to create more products for investors.

*Section 120.600.* Section 120.600 is being amended to include the definitions of dollar-weighted average net rate and weighted average coupon (WAC) pool. These definitions are needed for clarity as part of incorporating WAC pools into the secondary market.

*Section 120.610(e).* This section of the regulations is being amended to allow a different interest rate for WAC pool certificates. The current regulation requires that the interest rate on a pool certificate must be equal to the lowest individual interest rate of the loans in the pool. The change will add a dollar-weighted average net rate of all the loans in the pool.

*Section 120.611(a).* This section of the regulations is being amended to add a new paragraph (7) to allow for a maximum allowable difference in the net rates on the loans in WAC pools. Specifically, paragraph (7) includes the requirement for WAC Pools to have a maximum allowable difference between the highest and lowest Net Rate on the guaranteed portions that are placed in the pool. A technical amendment is also being made to paragraphs (5) and (6) of this section to delete and re-insert the word "and."

## III. Justification for Publication as Interim Final Rule

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act (APA) and SBA regulations, 5 U.S.C. 553 and 13 CFR 101.108. Section 553(b)(3)(B) of the APA provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. The good cause

requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations arise where an agency must issue a rule without public participation. The current turmoil in the financial markets is having a negative impact on the availability of financing for small businesses in two ways. The current increased cost of funds banks are facing, coupled with established rate limits for 7(a) loans, is causing costs for originating such loans to become higher, creating a situation where SBA program participation is not in a lender's financial interest. At the same time, many SBA lenders sell loans on the secondary market in order to manage their liquidity. SBA's current regulations governing base interest rates SBA lenders can charge on their SBA guaranteed loans are resulting in loans being originated at interest rates that do not make it economical to sell them on the secondary market. Without secondary market sales, many lenders are not able to fund loans. The net effect is that lenders are less and less willing to extend credit to small business borrowers at a time when it is critically needed.

Further, the secondary market for 7(a) loans is experiencing disruptions due to the current economic environment. SBA believes that the introduction of an additional base rate and the allowance of weighted average coupon pools will assist in enabling lenders to continue flows of capital to small businesses and stabilizing the secondary market. Because of the extraordinary situation in the credit markets severely limiting the availability of financing for small businesses, there is an urgent need to make the changes immediately to ensure continued access to capital for small businesses. Small businesses are responsible for approximately two-thirds of all new job creation and are essential to a stable economy.

Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest, as it would harm those small businesses that need immediate access to capital. Any such delay would be extremely prejudicial to the affected businesses.

Although this rule is being published as an interim final rule, comments are

hereby solicited from interested members of the public. These comments must be received on or before December 15, 2008. SBA may then consider these comments in making any necessary revisions to these regulations.

#### IV. Justification for Immediate Effective Date of Interim Final Rule

The Administrative Procedure Act requires that "publication or service of a substantive rule shall be made not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). SBA finds that good cause exists to make this final rule effective the same day it is published in the **Federal Register**.

The purpose of the APA provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. For the reasons set forth above in the section on Justification for Publication as Interim Final Rule, SBA finds that good cause exists for making this interim final rule effective immediately, instead of observing the 30-day period between publication and effective date. SBA believes that many entities—SBA lenders and small businesses alike—will be assisted by the immediate adoption of this rule and that no delay in effective date is necessary for the public to adjust its behavior. The changes adopted in this rule extend additional choices and options to lenders and small businesses; however, current program options and practices remain available.

#### V. Comments Request

SBA requests comments on all aspects of this interim final rule, including the underlying policies.

*Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)*

*Executive Order 12866:* The Office of Management and Budget (OMB) has determined that this rule constitutes a significant regulatory action under Executive Order 12866.

*Executive Order 12988:* For the purposes of Executive Order 12988, Civil Justice Reform, SBA has determined that this rule is crafted, to the extent practicable, in accordance with the standards set forth in §§ 3(a) and 3(b)(2), to minimize litigation, eliminate ambiguity, and reduce burden.

*Executive Order 13132:* For the purposes of Executive Order 13132, the

SBA determined that this rule has no federalism implications warranting preparation of a federalism assessment.

*Paperwork Reduction Act:* SBA certifies that this interim final rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

*Regulatory Flexibility Act:* Because the rule is an interim final rule, there is no requirement for SBA to prepare an Initial Regulatory Flexibility Act (IRFA) analysis. The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an IRFA which describes whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA requires analysis of a rule only where notice and comment rulemaking are required. Rules are exempt from Administrative Procedure Act (APA) notice and comment requirements and therefore from the RFA requirements when the agency for good cause finds that notice and public procedure thereon is impracticable, unnecessary, or contrary to the public interest. In this case it would be contrary to the public interest to delay the promulgation of the rule.

#### List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses.

■ For the reasons set forth above, SBA amends 13 CFR part 120 as follows:

#### PART 120—BUSINESS LOANS

■ 1. The authority citation for part 120 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), 634(b)(7), 634(b)(14), 633(b)(3), 636(a) and (h), 650, and 696(3) and 697(a)(2).

■ 2. Amend § 120.214 by revising paragraph (c) to read as follows:

#### § 120.214 What conditions apply for variable interest rates?

\* \* \* \* \*

(c) *Base rate.* The base rate will be one of the following: (i) The prime rate; (ii) the thirty-day (1-month) London Interbank Offered Rate (LIBOR) plus 3 percentage points, or (iii) the Optional Peg Rate. The prime or LIBOR rate will be that which is in effect on the first business day of the month, as printed in a national financial newspaper published each business day. SBA

publishes the Optional Peg Rate quarterly in the **Federal Register**.

\* \* \* \* \*

■ 3. In § 120.600 redesignate paragraphs (c) through (j) as paragraphs (d) through (k) and add new paragraphs (c) and (l) to read as follows:

**§ 120.600 Definitions.**

\* \* \* \* \*

(c) *Dollar-Weighted Average Net Rate* of a Pool is calculated by multiplying the interest rate of each loan in the Pool by the ratio of that loan's current outstanding guaranteed principal to the current outstanding guaranteed principal of all loans in the Pool, and adding the sum of the resulting products. The Dollar-Weighted Average Net Rate of a Pool will fluctuate over the life of the Pool as loan defaults, prepayments and normal loan repayments occur.

\* \* \* \* \*

(l) *Weighted Average Coupon (WAC) Pool* is a Pool where the interest rate payable to the investor is equal to the Dollar-Weighted Average Net Rate of the Pool.

■ 4. Amend § 120.610 by revising paragraph (e) as follows:

**§ 120.610 Form and terms of Certificates.**

\* \* \* \* \*

(e) *Interest rate on Pool Certificate.* The interest rate on a Pool Certificate will be either the lowest Net Rate of any individual guaranteed portion of a loan in the Pool or the Dollar-Weighted Average Net Rate of the Pool.

■ 5. Amend § 120.611 by revising paragraphs (a)(5) and (6) and adding new paragraph (a)(7) as follows:

**§ 120.611 Pools backing Pool Certificates.**

(a) \* \* \*

(5) A maximum allowable difference between the remaining terms to maturity of the loans in the Pool;

(6) A minimum weighted average maturity at Pool formation; and

(7) A maximum allowable difference between the highest and lowest Net Rate on the guaranteed portions that are placed in a WAC Pool.

\* \* \* \* \*

**Sandy K. Baruah,**

*Acting Administrator.*

[FR Doc. E8-26999 Filed 11-7-08; 4:15 pm]

BILLING CODE 8025-01-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 73**

[Docket No. FAA-2008-1130; Airspace Docket No. 08-ASW-14]

RIN 2120-AA66

**Change of Controlling Agency for Restricted Areas R-6901A, R-6901B, and R-6903; Wisconsin**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action changes the controlling agency of R-6901A and R-6901B, Fort McCoy, WI, from "FAA Chicago ARTCC" to "FAA, Minneapolis ARTCC." This action also changes the controlling agency of R-6903, Sheboygan, WI, from "FAA, Chicago ARTCC" to "FAA, Minneapolis ARTCC." The FAA is taking this action in response to a request from Minneapolis Air Route Traffic Control Center (ARTCC) to reflect an administrative change of controlling agency responsibility for the restricted areas. There are no changes to the boundaries; designated altitudes; time of designation; or activities conducted within the affected restricted area.

**DATES:** *Effective Dates:* 0901 UTC, January 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Colby Abbott, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

**SUPPLEMENTARY INFORMATION:**

**History**

On August 18, 2008, Minneapolis ARTCC requested that the FAA change the controlling agency for R-6901A, R-6901B, and R-6903 from Chicago ARTCC to Minneapolis ARTCC. They proposed the controlling agency change request to enhance FAA service to the Volk Combat Readiness Training Center (CRTC) by establishing a single point of coordination for airspace usage. Additionally, as a single point of coordination, they could provide more accurate information to parties seeking information about the Volk airspace complex. Coordination and concurrence with the controlling agency change proposal was accomplished between the two ARTCCs and the Volk CRTC prior to this requested change being submitted by Minneapolis ARTCC.

Section 73.69 of Title 14 CFR part 73 was republished in FAA Order 7400.8P, effective February 16, 2008.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by revising the controlling agency listed for R-6901A and R-6901B, Fort McCoy, WI, and R-6903, Sheboygan, WI; transferring controlling agency responsibility for R-6901A and R-6901B from "FAA Chicago ARTCC" to "FAA, Minneapolis ARTCC" and for R-6903 from "FAA, Chicago ARTCC" to "FAA, Minneapolis ARTCC." This is an administrative change and does not affect the boundaries, designated altitudes, or activities conducted within the restricted area; therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it is amending the controlling agency for R-6901A and R-6901B, Fort McCoy, WI, and R-6903, Sheboygan, WI.

**Environmental Review**

The FAA has determined that this action qualifies for a categorical exclusion under the National