

FinReg Round-Up

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As we head into the second year of the COVID-19 pandemic, we can see the light at the end of the socially distanced tunnel, with the roll-out of three very effective vaccines and the potential for at least two other promising ones on the horizon. March also brought good news for businesses seeking loans from the Paycheck Protection Program (PPP) and those that may qualify for the Shuttered Venue Operators Grant (SVOG) program.



We also have new developments in the move toward the mothballing of LIBOR (the London Interbank Offered Rate) as the benchmark interest rate for financing agreements around the world. And, in a significant development without much fanfare, the Consumer Financial Protection Bureau (CFPB) has clarified that sex discrimination includes discrimination based on sexual orientation and gender identity.

PPP Application Period Extended and Shuttered Venue Operators Grant Program to Launch

There are a few pieces of good news for businesses interested in PPP loans and the SVOG program.

With the March 31 deadline for new PPP loans quickly approaching, Congress has passed the PPP Extension Act of 2021. The Small Business Administration (SBA) will accept PPP applications from lenders through May 31, and has until June 30 to process all submitted applications. Funding for the PPP has also been extended until June 30.

Applicants should note that the application period ends on June 1, not June 30, as has been sometimes reported, and that the June 1 deadline is the deadline for lenders to submit applications to the SBA, not for borrowers to submit applications to lenders. Borrowers that may qualify for first- or second-draw PPP loans will want to continue moving forward as rapidly as possible in applying for the loan, as the 60-day extension will pass quickly, and lenders need time to review applications before submitting them to the SBA.

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More than four months after its creation, the SVOG program is set to launch April 8. The SBA has been releasing information on the program in small bits, including [FAQs](#) that are updated from time to time (the current version is the seventh version), guides on [documents that may be required for the application](#), and even [video tutorials](#). Most recently, the SBA officially published the [rules for applying for and the awarding of SVOG grants](#). The documentation requirements are lengthy and substantive, and applicants are also required to open an account on SAM.gov, which can take some time as well.

In another notable development, the American Rescue Plan Act of 2021, which was signed into law on March 11, modified the SVOG program so that eligible entities can

apply for both a PPP loan and an SVOG. The amount of any PPP loan will be deducted from the amount of the SVOG. This is a welcome change, as the extended rollout time of the SVOG was forcing some small businesses to forgo applying for a PPP loan in the hope that they would be found eligible for an SVOG. The extension now allows businesses to “dual track” regulations, which we highly recommend.

Both the PPP and the SVOG continue to be fluid. Unlike the PPP, which was an expansion of the existing SBA 7(a) loan program, the SVOG program is entirely new. Given the diverse nature of entities that may be eligible for the SVOG, and the many fact-specific differences between such entities, additional SBA guidance as the SVOG application process commences is expected.

Schedule and Guidance Released for Transition From LIBOR to New Global Benchmark

LIBOR, the set of benchmark interest rates at which major global banks lend to each other, has historically been used as a reference rate for a wide array of contracts in the financial services market, from sophisticated syndicated loan agreements and commercial loans to residential mortgages and consumer financing.

Intercontinental Exchange Benchmark Administration Limited (IBA), the authorized and regulated administrator of LIBOR, has announced the schedule for retiring this global benchmark for lenders, which calls for the use of certain LIBOR benchmarks to end by Dec. 31 and others to continue through June 2023. The Federal Reserve Board followed the IBA's announcement of the schedule for discontinuing LIBOR with a confirmation that the announcement triggered the beginning of the transition process and resulting obligations by market participants. The Fed also announced guidance for examiners to use in evaluating whether firms are adequately prepared for the transition.

The need to transfer from LIBOR arises from the discovery of an international scheme involving multiple banks to manipulate LIBOR rates that has eroded the benchmark's credibility and spurred calls for its replacement.

IBA stated in its March 5 announcement that most LIBOR settings will either cease to be provided by any

administrator or will no longer be representative by the end of 2021. This deadline applies to all British pound, euro, Swiss franc and Japanese yen LIBOR settings, as well as one-week and two-month U.S. dollar LIBOR settings. The remaining USD LIBOR settings, which are more widely used in the United States, will end on June 30, 2023. The Secured Overnight Financing Rate (SOFR) is set to replace LIBOR.

In anticipation of the transition away from LIBOR, the Federal Reserve Board formed the Alternative Reference Rates Committee (ARRC), which has prepared language for market participants to use in their agreements that addresses the shift from LIBOR to SOFR. According to the ARRC's recommended language, one of the triggers for a “Benchmark Transition Event” is a public statement by the administrator of a benchmark announcing that the administrator has ceased or will cease to provide the benchmark.

The purpose of a Benchmark Transition Event is to establish the beginning of the transition process. The ARRC confirmed on March 9 that IBA's March 5 announcement and a similar announcement by the United Kingdom Financial Conduct Authority (FCA) constituted a Benchmark Transition Event with respect to all USD LIBOR settings, setting in motion obligations for

market participants, lenders in bilateral loans and agents in syndicated loans. (Read our alert on the most recent LIBOR developments and their impact [here](#).)

The Federal Reserve Board in March also issued guidance for examiners reviewing the transition plans of firms supervised by the Federal Reserve. According to this guidance, examiners should assess six key aspects of all transition efforts: transition planning, financial exposure measurement and risk assessment, operational preparedness and controls, legal contract preparedness, communication, and oversight.

In recent remarks at an ARRC symposium, Randal Quarles, the Fed's vice chair for bank supervision, noted that despite LIBOR's planned sooner-rather-than-later retirement, the use of USD LIBOR as a reference rate had actually increased over the past three years and cautioned that market participants "should be aware of the intense supervisory focus we are placing on their transition, and especially on their plans to end issuance of new contracts by year-end."

CFPB Rule Clarifies Sex Discrimination Includes Sexual Orientation, Gender Identity

The CFPB has clarified that the prohibition on sexual discrimination against credit applicants under two federal anti-discrimination regulations also includes sexual orientation and gender identity discrimination.

In an [Interpretive Rule](#) issued on March 9, the CFPB said the prohibitions in the Equal Credit Opportunity Act (ECOA) and Regulation B also encompass "discrimination based on actual or perceived nonconformity with sex-based or gender-based stereotypes and discrimination based on an applicant's associations."

The ECOA prohibits credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age or because the applicant receives public assistance, and Regulation B protects applicants from discrimination in any aspect of a credit transaction.

The CFPB issued the Interpretive Rule in response to the U.S. Supreme Court's landmark decision in *Bostock v. Clayton County, Georgia*, holding that the ban on sexual discrimination in Title VII of the Civil Rights Act of 1964 encompasses discrimination based on sexual orientation and gender identity.

In issuing this Interpretive Rule, the CFPB is breaking new ground on anti-discrimination policies for lenders. While critics say these policymaking decisions are an end run around Congress and its legislative powers, issuing Interpretive Rules is within the scope of the CFPB's authority.

Related Professional

Melissa Hall mhall@loeb.com

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