CREFC'S LIBOR LEGACY PLAYBOOK 1.0

CRE Finance Council®
The Voice of Commercial Real Estate Finance

CREFC's LIBOR Legacy Playbook is intended to assist the CMBS community in transitioning outstanding LIBOR-based loans.

US Dollar LIBOR ("LIBOR") is scheduled to cease being published on a representative basis beyond June 30, 2023. With that impending deadline in mind, CREFC and its members have developed the *CREFC LIBOR Legacy Playbook* ("*Playbook*"), designed to address the implications and operational issues related to transitioning floating rate loans currently indexed to LIBOR to the recommended SOFR index plus the Federal Reserve/Alternative Reference Rate Committee ("ARRC") recommended spread adjustment[1] or another contractually agreed-upon benchmark.

The transition from LIBOR to an alternate benchmark will impact numerous floating rate market participants, including our borrowing community, master, primary, and special servicers, trustees, certificate administrators, rating agencies, and investors. Recognizing the importance of a well-executed and successful transition, this *Playbook* is largely tailored to a servicer's role in the transition of floating rate loans from a LIBOR index to a SOFR index. That said, many of the processes and procedures outlined in this *Playbook* may prove useful to other parties such as certificate administrators, trustees, operating advisors, and rating agencies.

> Note that this *Playbook* may be reviewed and may be updated from time to time as this important transition progresses and CREFC and its members work through the process. Please see important disclosures here.

[1] The Federal Reserve and the ARRC recommended a spread adjustment be added to the replacement rate to account for the differences between LIBOR and SOFR. These tenor-based spread adjustments are set forth in the Adjustable Interest Rate (LIBOR) Act (the "LIBOR Act") (12 U.S.C. 5801 et seq.) and the table below.

LIBOR tenor being replaced	Spread applied to SOFR based rate (bps)	Spread applied to SOFR based rate (%)
Overnight USD LIBOR	0.644	0.00644%
1-week USD LIBOR	3.839	0.03839%
1-month USD LIBOR	11.448	0.11448%
2-month USD LIBOR	18.456	0.18456%
3-month USD LIBOR	26.161	0.26161%
6-month USD LIBOR	42.826	0.42826%
1-year USD LIBOR	71.513	0.71513%

STEP-BY-STEP TRANSITION GENERAL GUIDELINES

As part of this important transition, we anticipate servicers will:

> **Educate** staff regarding LIBOR cessation and the transition to a benchmark replacement[2] with the appropriate credit adjustment spread

> **Identify** all LIBOR benchmarked loans in their servicing platforms

> **Determine** if the governing securitization or servicing documents designate the servicer as the determining person who will select the benchmark replacement[3]

> **Review** all applicable loan/securitization documents for fallback provisions, including, but not limited to:
- **Designation of a benchmark replacement rate and spread adjustment, if any**

> **Review** (Continued)
- **Trigger events:**
  - Notice obligations (both to borrower and other transaction parties, if applicable), and
  - Timing of designation, notices, and effective date of benchmark replacement

> **Categorize each LIBOR loan based on:**
- Loan type,
- Processes the determining person must follow in the transition, and
- Applicable language in the loan documents, securitization, and servicing documents.

[2] The LIBOR Act defines the term "benchmark replacement" to mean, a benchmark, or an interest rate or dividend rate (which may or may not be based in whole or in part on a prior setting of LIBOR), to replace LIBOR or any interest rate or dividend rate based on LIBOR, whether on a temporary, permanent, or indefinite basis, under or in respect of a LIBOR Contract.

[3] The LIBOR Act defines the term "determining person" to mean, with respect to any LIBOR contract, any person with the authority, right, or obligation, including on a temporary basis (as identified by the LIBOR contract or by the governing law of the LIBOR contract, as appropriate) to determine a benchmark replacement.

PROCESSES GOVERNED BY LOAN, SECURITIZATION, AND/OR SERVICING DOCUMENTS

The process will be governed by the language in loan, securitization, and/or servicing documents, as applicable, as well as industry standards and applicable law and regulations. Loan, securitization, and servicing documentation differ both in form and substance across the industry based on vintage, author, structural, and programmatic differences.

CREFC encourages all market participants impacted by LIBOR cessation to work with your legal and other business advisors to carefully review all governing documentation and related regulations to ensure as smooth a transition as possible.

INVENTORY ASSESSMENT

Servicers should conduct a thorough assessment of all LIBOR benchmarked loans across their servicing platform. Factors to consider for such an assessment include:

Loan Type - Categorize the inventory of loans into the following categories:

> **Securitized Non-Agency**
- CMBS Conduit
- CMBS SASB
- CRE CLO
- SFR

> **Securitized and Non-Securitized Agency**
- Freddie Mac
- Fannie Mae

> **Balance Sheet**
- Life Company
- Bank
- Pension

> **Other**

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REVIEW OF UNDERLYING DOCUMENTATION

All transitions to a benchmark replacement are dictated by the loan and securitization documents and related regulations. Items to review within loan and securitization documents include:

> **Loan Documents**
> - Benchmark transition event/trigger
> - Benchmark replacement and credit spread adjustment
> - Early Opt-In Provisions
> - Conditions precedent (i.e., Rating Agency Confirmation, REMIC opinion)
> - Notice requirement
> - Notice timing
> - Effective date of transition to benchmark replacement
> - Process for benchmark conforming changes
> - Interest rate caps/swaps and any required replacements with appropriate benchmark replacement
> - Applicable law

> **Securitization Documents**
> - Notice requirements
> - Notice timing
> - Process for benchmark conforming changes
> - Conditions precedent (i.e., Rating Agency Confirmation, REMIC opinion)
> - Applicable law

> **Servicer Obligations**
> The servicer’s role will differ depending on loan type and governing securitization and/or servicing documentation.

REVIEW OF UNDERLYING DOCUMENTATION (CONTINUED)

> **Securitized Non-Agency**
- **CMBS Conduit** – Mostly older vintage transactions that do not have ARRC-recommended language[4] and therefore determining person for the loans may be master or special servicer.
- **CMBS SASB** – Newer vintage transactions may incorporate ARRC-recommended language, designate a formal determining person role and/or include an early opt-in option to transition to SOFR.
- **CRE CLO** – Collateral manager or special servicer may have the formal role as determining person.
- **SFR** – Servicer may have role with respect to implementing benchmark replacement activities.

> **Securitized and Non-Securitized Agency**
It is expected that the Agencies will issue specific direction to servicers and other transaction parties. See transition information from Freddie Mac (and Fannie Mae), including their Playbook and FAQ here.

> **Balance Sheet - Life Company, Bank, Pension and Other**
Balance-sheet lenders typically have greater involvement and are expected to act as determining parties. It is anticipated that such lenders will issue specific direction to servicers. Communication of data points that servicers will need is encouraged.

[4] The "ARRC-recommended language" refers to hardwired fallback language that specifies CME Term SOFR plus the applicable Fed/ARRC spread adjustment as the primary benchmark replacement and spread (i.e., the first step in a waterfall).

SECURITIZED NON-AGENCY (PRIVATE-LABEL) LOANS FOR WHICH SERVICER IS DETERMINING PERSON

Unlike Agency CMBS and Balance Sheet loans, private-label CMBS master and special servicers may have a prescribed role in the benchmark replacement transition process for Securitized Non-Agency Loans. Therefore it may be necessary to determine whether proactive action or remediation efforts to modify the loan documents are required. The threshold issue is to determine if the term of the loan will extend beyond LIBOR cessation. If the maturity date of the loan extends beyond June 30, 2023 further evaluation is warranted and further action may be needed.

Maturing *before* June 30, 2023:

> **No Extension Option**. Except as is noted below, no action is needed for loans maturing before the LIBOR cessation date of June 30, 2023 without any extension options. These loans will either:
- Payoff before June 30, 2023, or
- Be in default management or workout.

Should any workout or forbearance include a maturity date extension or modification and the loan documents do *not* identify a non-LIBOR based replacement index, the special servicer should seek to modify the loan to adopt clear hardwired contractual fallback language prior to June 30, 2023. In the absence of express contractual language to the contrary, the special servicer should seek to fall back to the applicable Board-Selected benchmark replacement (CME Term SOFR plus the Fed/ARRC spread adjustment)[5].

Master and special servicers should also be mindful and attentive to any loan that is in short-term forbearance after a maturity date and prior to refinancing.

[5] The Board of Governors of the Federal Reserve System adopted a final rule (https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20221216a1.pdf) (the "Final Rule") to implement the LIBOR Act that designates CME Term SOFR plus the applicable spread adjustment as the Board-Selected benchmark replacements for a LIBOR contract that is not a consumer loan, agency loan, FFELP ABS nor a derivative transaction.

SECURITIZED NON-AGENCY (PRIVATE-LABEL) LOANS FOR WHICH SERVICER IS DETERMINING PERSON (CONTINUED)

Maturing *before* June 30, 2023 (Continued):

Should any workout or forbearance include a maturity date extension or modification and the loan documents *do* identify a non-LIBOR based replacement index, the special servicer should consult with legal counsel to determine the impact, if any, of the potential continued publication of LIBOR on a "synthetic" basis[6].

> **With Extension Option**. Loans with extension options that, if exercised, would extend the maturity date beyond the LIBOR cessation date of June 30, 2023 and the loan documents do *not* contain fallback provisions that identify a non-LIBOR based replacement index.
  - **Action/monitoring needed**
  - These loans will either:
    - Payoff before June 30, 2023; or

> **With Extension Option** (Continued).
    - Be extended and with borrower's agreement either:
      - Transition the loan to a benchmark replacement (CME Term SOFR plus the applicable Fed/ARRC spread adjustment) at the beginning of the extension; or
      - Extend the loan with clear ARRC recommended fallback language. See timeline below and notice discussion.
      - If the loan documents *do* contain fallback provisions that identify a non-LIBOR based replacement index, the special servicer should consult with legal counsel to determine the impact, if any, of the continued publication of LIBOR on a "synthetic" basis.

[6] The FCA has proposed to require IBA to continue publishing one-, three-, or six-month USD LIBOR on a synthetic basis until the end of September 2024 ("Synthetic LIBOR"). See FCA, Further Consultation and Announcements on the Wind-down of LIBOR (Nov. 23, 2022), https://www.fca.org.uk/news/news-stories/further-consultation-announcements-wind-down-libor (discussing further consultation on synthetic LIBOR, https://www.fca.org.uk/publication/consultation/cp22-21.pdf).

SECURITIZED NON-AGENCY (PRIVATE-LABEL) LOANS FOR WHICH SERVICER IS DETERMINING PERSON (CONTINUED)

Maturing *after* June 30, 2023

> Loan documents *do* identify a non-LIBOR based replacement index
- Consult with legal counsel to determine the impact of the potential continued publication of LIBOR on a "synthetic" basis.

> Loan documents do not identify a non-LIBOR based replacement index
- **Action/monitoring needed**
- Modification of fallback with borrower's agreement in connection with any of the following loan actions:
  - Contemplated loan extensions
  - Loan assumption requests and other consent matters
  - Specially serviced loan modification requests
- Board-Selected benchmark replacement for Non-GSE Loans – CME Term SOFR plus the applicable Fed/ARRC spread adjustment
- Confirm which party should process and identify appropriate third-party consents and/or consultations required
- Conditions precedent dictated by loan documents but may include the following:
  - Rating Agency Confirmation;
  - REMIC opinions or reliance on IRS Ruling; and
  - ERISA opinion or guidance.
- Rounding - the LIBOR Act states that any provision specifying rounding conventions for a benchmark replacement shall not be altered or impaired.

SECURITIZED NON-AGENCY (PRIVATE-LABEL) LOANS FOR WHICH SERVICER IS DETERMINING PERSON (CONTINUED)

Remediation of Securitized Non-Agency loans maturing after LIBOR termination, and loan documents do *not* identify a non-LIBOR based replacement index:

> Modification of fallback with borrower's agreement in connection with any of the following loan actions:
- Contemplated loan extensions
- Loan assumption requests and other consent matters
- Specially serviced loan modification requests

> Board-Selected benchmark replacement for Non-GSE Loans – CME Term SOFR plus the applicable Fed/ARRC spread adjustment

> Confirm which party should process and identify appropriate third party consents and/or consultations required

> Conditions precedent dictated by loan documents but may include the following:
- Rating Agency Confirmation;
- REMIC opinions or reliance on IRS Ruling; and
- ERISA opinion or guidance.

> Rounding - LIBOR Act states for that any LIBOR contract covered by the Act the existing provision in the contract specifying rounding conventions for a benchmark replacement shall not be altered or impaired.

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NOTICE AND IMPLEMENTATION

> **Timeline**. ARRC recommends[7] that the determining person notify borrower and other relevant parties, as applicable, of the planned benchmark replacement at least 6 months prior to the earlier of:
  - Date benchmark replacement would become effective; and
  - June 30, 2023.

> **Notices to be Considered**
- **Operational Notices** - requesting direction and/or data:
  - CMBS Conduit and SASB - Notice to transaction parties
  - CRE CLO - Notice to collateral manager and special servicers, if applicable
  - Balance Sheet - Notice to lenders
  - Securitized and Non-Securitized Agency - It is expected that the Agencies will issue specific notice direction to servicers, primary servicers, and other transaction parties.

> **Notices to be Considered** (Continued)
- **Borrower Notices**
  - Notice of anticipated LIBOR termination date (June 30, 2023)
  - Notice of benchmark replacement and conforming changes
  - FAQs and/or customer service communication

> **Rating Agency Confirmations (RACs).** Loan, securitization, and/or servicing documents may require, among other things, rating agency confirmation as a condition prior to the transition from LIBOR. Some rating agencies have released guidance or an announcement regarding the transition (see detail below). Other rating agencies may follow suit, but until then, it may be best to catalog for each loan and/or transaction those agencies, if any, required to issue rating agency confirmations and plan accordingly.

[7] ARRC LIBOR Legacy Playbook (July 11, 2022): https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2022/LIBOR_Legacy_Playbook.pdf.

NOTICE AND IMPLEMENTATION
(CONTINUED)

The list below provides a summary of current rating agency pronouncements as of early February 2023:

- **Fitch Ratings**. See January 6, 2023 press release here, announcing that Fitch Ratings will not review individual requests for RACs related solely to a transition from LIBOR to a benchmark replacement.

- **KBRA – Kroll Bond Rating Agency**. See February 1, 2023 press release here announcing that requests for RACs should be sent directly to KBRA's CMBS Surveillance mailbox (cmbssurveillance@kbra.com) and note in the subject line that it is a LIBOR transition RAC request.

- **S&P Global**. See December 8, 2022 guidance here encouraging transaction parties to inform S&P Global of potential changes to transactions as early as possible.

- **Moody's Investors Service**. Please direct RAC requests and notifications for US CMBS transactions to cmbssurveillance@moodys.com and include "RAC related to LIBOR Transition" in the subject line.

- **DBRS Morningstar.** DBRS Morningstar declines to review loan-level rating agency confirmation requests that are exclusively related to the transition from LIBOR.

Some rating agencies, to the extent RAC requirements are not fully waived, are amenable to bulk or grouped notices and/or RAC requests (i.e., cover letter explanation of planned index transition with attached schedule listing the loans and associated securitization) for assets with similar and uncomplicated index transitions. Servicers should seek rating agency specific guidance for when this may be appropriate, for any questions, or for assets with unique or complicated index transitions.

IMPORTANT DISCLOSURE. THIS *PLAYBOOK* HAS BEEN DEVELOPED TO ASSIST SERVICERS AND OTHER MARKET PARTICIPANTS IN PREPARING FOR LIBOR CESSATION AND DOES NOT IN ANY WAY DIVEST MARKET PARTICIPANTS FROM THEIR RESPONSIBILITY TO CAREFULLY REVIEW THE GOVERNING LOAN, SECURITIZATION AND SERVICING DOCUMENTS, AND APPLICABLE LAWS AND REGULATIONS. THIS *PLAYBOOK* IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY, AND SHOULD NOT BE RELIED UPON OR USED IN LIEU OF PROFESSIONAL LEGAL, TAX OR OTHER FINANCIAL ADVICE. CREFC ASSUMES NO RESPONSIBILITY FOR INDEPENDENT VERIFICATION OF INFORMATION PROVIDED HEREIN, AND MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY, RELIABILITY OR COMPLETENESS OF SUCH INFORMATION. CREFC EXPRESSLY DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL LIABILITY FOR ANY ERRORS IN, OR OMISSIONS FROM, THIS *PLAYBOOK*, OR ANY RESULTS THAT MAY BE DERIVED FROM USE OR RELIANCE HEREOF. CREFC HAS NO OBLIGATION TO UPDATE OR OTHERWISE REVISE ANY INFORMATION CONTAINED IN THIS *PLAYBOOK* OR OTHERWISE MAKE AVAILABLE TO ANY RECIPIENT ANY ADDITIONAL INFORMATION.

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