

117TH CONGRESS
1ST SESSION

H. R. 4616

To deem certain references to LIBOR as referring to a replacement benchmark rate upon the occurrence of certain events affecting LIBOR, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2021

Mr. SHERMAN introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on Ways and Means, and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To deem certain references to LIBOR as referring to a replacement benchmark rate upon the occurrence of certain events affecting LIBOR, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Adjustable Interest
5 Rate (LIBOR) Act of 2021”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds that—

1 (1) LIBOR is used as a benchmark rate in
2 more than \$200 trillion of contracts worldwide;

3 (2) a significant number of existing contracts
4 that reference LIBOR do not provide for the use of
5 a clearly defined or practicable replacement bench-
6 mark rate when LIBOR is discontinued; and

7 (3) the cessation or non-representativeness of
8 LIBOR could result in disruptive litigation related
9 to existing contracts that do not provide for the use
10 of a clearly defined or practicable replacement
11 benchmark rate.

12 (b) PURPOSE.—It is the purpose—

13 (1) of this Act—

14 (A) to establish a clear and uniform proc-
15 ess, on a nationwide basis, for replacing LIBOR
16 in existing contracts the terms of which do not
17 provide for the use of a clearly defined or prac-
18 ticable replacement benchmark rate, without af-
19 fecting the ability of parties to use any appro-
20 priate benchmark rate in new contracts;

21 (B) to preclude litigation related to exist-
22 ing contracts the terms of which do not provide
23 for the use of a clearly defined or practicable
24 replacement benchmark rate; and

1 (C) to allow existing contracts that ref-
2 erence LIBOR but provide for the use of a
3 clearly defined fallback and practicable replace-
4 ment rate, to operate according to their terms;
5 and

6 [(2) of section 6 to provide that modifications
7 of existing contracts pursuant to this chapter do not
8 result in recognition of gain or loss for Federal in-
9 come tax purposes and to provide authority to the
10 Secretary of the Treasury to provide clear guidance
11 regarding the Federal income tax consequences of
12 transitioning contracts that reference IBORs to re-
13 placement benchmark rates.]

14 **SEC. 3. DEFINITIONS.**

15 As used in this Act, the following terms shall have
16 the following meanings:

17 (1) “Benchmark” shall mean an index of inter-
18 est rates or dividend rates that is used, in whole or
19 in part, as the basis of or as a reference for calcu-
20 lating or determining any valuation, payment or
21 other measurement.

22 (2) “Benchmark Administrator” means a per-
23 son that publishes a Benchmark for use by third
24 parties.

1 (3) “Benchmark Replacement” shall mean a
2 Benchmark, or an interest rate or dividend rate
3 (which may or may not be based in whole or in part
4 on a prior setting of LIBOR), to replace LIBOR or
5 any interest rate or dividend rate in LIBOR, wheth-
6 er on a temporary, permanent, or indefinite basis,
7 under or in respect of a LIBOR Contract.

8 (4) “Benchmark Replacement Conforming
9 Changes” shall mean, with respect to any LIBOR
10 Contract, any documented technical, administrative,
11 or operational changes, alterations, or modifications
12 that, in the reasonable judgment of a Calculating
13 Person, are necessary or appropriate to permit the
14 administration and calculation of the Board-Selected
15 Benchmark Replacement under or in respect of such
16 LIBOR Contract in a manner consistent with rel-
17 evant market practice or recommendations for simi-
18 lar types of LIBOR Contracts and, to the extent
19 practicable, the manner in which such LIBOR Con-
20 tract was administered immediately prior to the
21 LIBOR Replacement Date.

22 (5) “Board” means the Board of Governors of
23 the Federal Reserve System.

1 (6)(A) “Board-Selected Benchmark Replace-
2 ment” shall mean a Benchmark Replacement identi-
3 fied by the Board that is based on SOFR.

4 (B) The Board shall adjust the Board-Selected
5 Benchmark Replacement for each category of
6 LIBOR Contract that the Board may identify to—

7 (i) apply to each LIBOR tenor; and

8 (ii) incorporate the relevant Tenor Spread
9 Adjustment. (C) For consumer loans, the
10 Board-Selected Benchmark Replacement shall
11 initially reflect the spread between the Board-
12 Selected Benchmark Replacement and LIBOR
13 immediately before the LIBOR Replacement
14 Date and shall incorporate the relevant Tenor
15 Spread Adjustment over a one-year transition
16 period.

17 (7) “Calculating Person” shall mean, with re-
18 spect to any LIBOR Contract, any person (which
19 may be the Determining Person) responsible for cal-
20 culating or determining any valuation, payment, or
21 other measurement based on a Benchmark.

22 (8) “Determining Person” shall mean, with re-
23 spect to any LIBOR Contract, any person with the
24 authority, right, or obligation, including on a tem-
25 porary basis, (as identified by the provisions of the

1 LIBOR Contract, or as identified by the governing
2 law of the LIBOR Contract, as appropriate) to de-
3 termine a Benchmark Replacement.

4 (9) “Fallback Provisions” shall mean terms in
5 a LIBOR Contract for determining a Benchmark
6 Replacement, including any terms relating to the
7 date on which the Benchmark Replacement becomes
8 effective.

9 (10) “LIBOR” shall mean the overnight and 1-
10 , 3-, 6-, and 12-month tenors of U.S. dollar LIBOR
11 (formerly known as the London interbank offered
12 rate) as administered by ICE Benchmark Adminis-
13 tration Limited (or any predecessor or successor
14 thereof). LIBOR shall not include the 1-week or 2-
15 month tenors of U.S. dollar LIBOR.

16 (11) “LIBOR Contract” shall mean, without
17 limitation, any contract, agreement, indenture, orga-
18 nizational documents, guarantee, mortgage, deed of
19 trust, lease, Security (whether representing debt or
20 equity, and including any interest in a corporation,
21 a partnership, or a limited liability company), instru-
22 ment, or other obligation or asset that, by its terms,
23 continues in any way to use LIBOR as a Bench-
24 mark as of the applicable LIBOR Replacement
25 Date.

1 (12) “LIBOR Replacement Date” shall mean
2 the first London banking day after June 30, 2023,
3 unless the Board determines that any LIBOR tenor
4 will cease to be published or cease to be representa-
5 tive on a different date.

6 (13) “Security” shall have the meaning as-
7 signed to such term in section 2(a) of the Securities
8 Act of 1933 (15 U.S.C. 77b(a)).

9 (14) “SOFR” shall mean the Secured Over-
10 night Financing Rate published by the Federal Re-
11 serve Bank of New York (or a successor adminis-
12 trator).

13 【(15) “Tax-Relevant IBOR” shall mean
14 LIBOR, any tenor of non-U.S. dollar currency rates
15 formerly known as the London interbank offered
16 rate as administered by ICE Benchmark Adminis-
17 tration Limited (or any predecessor or successor ad-
18 ministrator thereof), and any other interbank offered
19 rates that are expected to cease.】

20 【(16) “Tax-Relevant IBOR Contract” shall
21 mean, without limitation, any contract, agreement,
22 mortgage, deed of trust, lease, Security (whether
23 representing debt or equity, and including any inter-
24 est in a corporation, a partnership, or a limited li-

1 ability company), instrument or other obligation that
 2 uses an IBOR as a Benchmark.】

3 (17) “Tenor Spread Adjustment” shall mean—

4 (A) 0.00644 percent for overnight LIBOR;

5 (B) 0.11448 percent for 1-month LIBOR;

6 (C) 0.26161 percent for 3-month LIBOR;

7 (D) 0.42826 percent for 6-month LIBOR;

8 and

9 (E) 0.71513 percent for 12-month LIBOR.

10 **SEC. 4. LIBOR CONTRACTS.**

11 (a) On the LIBOR Replacement Date, the Board-Se-
 12 lected Benchmark Replacement shall, by operation of law,
 13 be the Benchmark Replacement for any LIBOR Contract
 14 that, after giving any effect to subsection (b), contains no
 15 Fallback Provisions.

16 (b) On the LIBOR Replacement Date, any Fallback
 17 Provisions in a LIBOR Contract that provide for a Bench-
 18 mark Replacement that is based in any way on any
 19 LIBOR value or require a person (other than a Bench-
 20 mark Administrator) to conduct a poll, survey, or inquiries
 21 for quotes or information concerning interbank lending or
 22 deposit rates shall be disregarded as if not included in
 23 such LIBOR Contract and shall be deemed null and void
 24 and without any force or effect.

1 (c) Subject to subsection (g)(2), a Determining Per-
2 son shall have authority under this Act, but shall not be
3 required, to select the Board-Selected Benchmark Re-
4 placement as the Benchmark Replacement.

5 (d) Any selection by a Determining Person of the
6 Board-Selected Benchmark Replacement pursuant to sub-
7 section (c) shall be—

8 (1) irrevocable;

9 (2) made by the earlier of the LIBOR Replace-
10 ment Date and the latest date for selecting a Bench-
11 mark Replacement according to the terms of such
12 LIBOR Contract; and

13 (3) used in any determinations of the Bench-
14 mark under or in respect of such LIBOR Contract
15 occurring on and after the LIBOR Replacement
16 Date.

17 (e) If a Determining Person has authority to select
18 the Board-Selected Benchmark Replacement under sub-
19 section (c) but does not select a Benchmark Replacement
20 by the date specified in subsection (d)(2), then, on the
21 LIBOR Replacement Date, the Board-Selected Bench-
22 mark Replacement shall, by operation of law, be the
23 Benchmark Replacement for the LIBOR Contract.

24 (f) If the Board-Selected Benchmark Replacement
25 becomes the Benchmark Replacement for a LIBOR Con-

1 tract pursuant to subsection (a), (c), or (e) then all Bench-
2 mark Replacement Conforming Changes shall become an
3 integral part of such LIBOR Contract by operation of law.
4 For the avoidance of doubt, a Calculating Person shall
5 not, unless explicitly required under the terms of the
6 LIBOR Contract, be required to obtain consent from, or
7 give advance notice to, any other person prior to the adop-
8 tion of Benchmark Replacement Conforming Changes.

9 (g) The provisions of this Act shall not alter or im-
10 pair—

11 (1) any written agreement specifying that a
12 LIBOR Contract shall not be subject to this Act;

13 (2) any LIBOR Contract that contains Fall-
14 back Provisions that identify a Benchmark Replace-
15 ment that is not based in any way on any LIBOR
16 value (including, but not limited to, the prime rate
17 or the Effective Federal Funds Rate), except that
18 such LIBOR Contract shall be subject to subsection
19 (b);

20 (3) any LIBOR Contract subject to subsection
21 (c) as to which a Determining Person does not elect
22 to use a Board-Selected Benchmark Replacement
23 pursuant to subsection (c), except to the extent that
24 such LIBOR Contract is subject to subsection (b) or
25 (e);

1 (4) the application to a Board-Selected Bench-
2 mark Replacement of any cap, floor, modifier, or
3 spread adjustment to which LIBOR had been sub-
4 ject pursuant to the terms of a LIBOR Contract; or

5 (5) any provisions of Federal consumer finan-
6 cial law as defined in section 1002 of the Dodd-
7 Frank Wall Street Reform and Consumer Protection
8 Act (12 U.S.C. 5481), and any Benchmark Replace-
9 ment and the transition to it must be in accordance
10 with such law.

11 **SEC. 5. CONTINUITY OF CONTRACT AND SAFE HARBOR.**

12 (a) A Board-Selected Benchmark Replacement and
13 the selection or use of a Board-Selected Benchmark Re-
14 placement as a Benchmark Replacement under or in re-
15 spect of a LIBOR Contract, as well as any Benchmark
16 Replacement Conforming Changes, by operation of section
17 4 shall constitute—

18 (1) a commercially reasonable replacement for
19 and a commercially substantial equivalent to
20 LIBOR;

21 (2) a reasonable, comparable, or analogous rate,
22 index, or term for LIBOR;

23 (3) a replacement that is based on a method-
24 ology or information that is similar or comparable to
25 LIBOR;

1 (4) substantial performance by any person of
2 any right or obligation relating to or based on
3 LIBOR; and

4 (5) a replacement that has historical fluctua-
5 tions that are substantially similar to those of
6 LIBOR for purposes of the Truth in Lending Act
7 and its implementing regulations.

8 (b) Neither of (1) the selection or use of a Board-
9 Selected Benchmark Replacement as a Benchmark Re-
10 placement or (2) the determination, implementation, or
11 performance of Benchmark Replacement Conforming
12 Changes, in each case by operation of section 4, shall (A)
13 be deemed to impair or affect the right of any person to
14 receive a payment, or to affect the amount or timing of
15 such payment, under any LIBOR Contract or (B) have
16 the effect of (i) discharging or excusing performance under
17 any LIBOR Contract for any reason, claim, or defense (in-
18 cluding, but not limited to, any force majeure or other pro-
19 vision in any LIBOR Contract), (ii) giving any person the
20 right to unilaterally terminate or suspend performance
21 under any LIBOR Contract, (iii) constituting a breach of
22 any LIBOR Contract, or (iv) voiding or nullifying any
23 LIBOR Contract.

24 (c) No person shall be subject to any claim or cause
25 of action in law or equity or request for equitable relief,

1 or have liability for damages, arising out of or related to
2 the selection or use of a Board-Selected Benchmark Re-
3 placement or the determination, implementation, or per-
4 formance of Benchmark Replacement Conforming
5 Changes, in each case by operation of section 4; provided,
6 however, that any person (including a Calculating Person)
7 shall remain subject to any existing [legal, regulatory, or
8 contractual] obligations to correct servicing or other min-
9 isterial errors under or in respect of a LIBOR Contract.

10 (d) The selection or use of a Board-Selected Bench-
11 mark Replacement or the determination, implementation,
12 or performance of Benchmark Replacement Conforming
13 Changes, in each case by operation of section 4, shall not
14 be deemed to—

15 (1) be an amendment or modification of any
16 LIBOR Contract; or

17 (2) prejudice, impair, or affect any person's
18 rights, interests, or obligations under or in respect
19 of any LIBOR Contract.

20 (e) Except as provided in either subsections (a), (b),
21 or (c) of section 4, the provisions of this Act shall not
22 be interpreted as creating any negative inference or nega-
23 tive presumption regarding the validity or enforceability
24 of—

1 (1) any Benchmark Replacement (including any
 2 method for calculating, determining, or imple-
 3 menting an adjustment to the Benchmark Replace-
 4 ment to account for any historical differences be-
 5 tween LIBOR and the Benchmark Replacement)
 6 that is not a Board-Selected Benchmark Replace-
 7 ment; or

8 (2) any changes, alterations, or modifications to
 9 or in respect of a LIBOR Contract that are not
 10 Benchmark Replacement Conforming Changes.

11 **[SEC. 6. TAX TREATMENT AND TAX REGULATIONS FOR**
 12 **LIBOR TRANSITION.**

13 **[(a) None of—]**

14 **[(1) the selection or use of a Board-Selected**
 15 **Benchmark Replacement as a Benchmark Replace-**
 16 **ment,]**

17 **[(2) the determination, implementation or per-**
 18 **formance of Benchmark Replacement Conforming**
 19 **Changes, or]**

20 **[(3) the application to any LIBOR Contract of,**
 21 **or the agreement by parties thereto to terms con-**
 22 **sistent with, section 4,]**

23 shall be treated as a sale, exchange, or other disposition
 24 of property for purposes of section 1001 of the Internal
 25 Revenue Code of 1986.

1 **[(b)** Not later than 180 days after the date of enact-
 2 ment of this Act, the Secretary of the Treasury shall issue
 3 such regulations as may be necessary or appropriate to
 4 carry out subsection (a) and address the Federal income
 5 tax consequences of transitioning a Tax-Relevant IBOR
 6 Contract to a replacement benchmark rate. Such regula-
 7 tions shall **[prioritize a smooth transition from the use**
 8 **of a Tax-Relevant IBOR]/[balance the need for a smooth**
 9 transition from the use of a Tax-Relevant IBOR with the
 10 prevention of inappropriate tax planning**].]**

11 **SEC. 7. PREEMPTION.**

12 (a) This Act and the regulations hereunder shall su-
 13 percede any and all laws, statutes, rules, regulations, or
 14 standards of any State, the District of Columbia, or any
 15 territory or possession of the United States, insofar as
 16 they provide for the selection or use of a Benchmark Re-
 17 placement or related conforming changes.

18 (b) No provision of State or local law that expressly
 19 limits the manner of calculating interest, including the
 20 compounding of interest, shall apply to the selection or
 21 use of a Board-Selected Benchmark Replacement or
 22 Benchmark Replacement Conforming Changes.

23 **SEC. 8. TRUST INDENTURE ACT OF 1939.**

24 Section 316 of the Trust Indenture Act of 1939 (15
 25 U.S.C. 77ppp) is amended—

1 (1) by striking “and” after “of subsection (a),”
2 in subsection (b); and
3 (2) by inserting “, and except that the right of
4 any holder of any indenture security to receive pay-
5 ment of the principal of and interest on such inden-
6 ture security shall not be deemed to be impaired or
7 affected by any change occurring by the application
8 of section 4 of the Adjustable Interest Rate
9 (LIBOR) Act of 2021 to any indenture security”
10 after “subject to such lien” in subsection (b).

11 **SEC. 9. SPECIAL ALLOWANCE PAYMENTS FOR LEGACY FED-**
12 **ERAL STUDENT LOANS.**

13 Section 438(b)(2)(I) of the Higher Education Act (20
14 U.S.C. 1087–1(b)(2)(I)) is amended by striking “of the
15 1-month London Inter Bank Offered Rate (LIBOR) for
16 United States dollars in effect for each of the days in such
17 quarter as compiled and released by the British Bankers
18 Association” and inserting “of 1-month LIBOR for
19 United States dollars in effect for each of the days in such
20 quarter as administered by ICE Benchmark Administra-
21 tion Limited (or any successor) or (as determined by the
22 Secretary) any replacement benchmark rate for contracts
23 established by the Board of Governors of the Federal Re-
24 serve System under the Adjustable Interest Rate (LIBOR)
25 Act of 2021.”.

1 **SEC. 10. RULEMAKING.**

2 Not later than 180 days after the date of enactment
3 of this Act, the Board shall issue such regulations as may
4 be necessary or appropriate to enable it to administer and
5 carry out the purposes of this Act, other than section 6.

○