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,
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4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Adjustable Interest
6 Rate (LIBOR) Act of 2021”.
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8 SEC. 2. FINDINGS AND PURPOSE.
9 (a) FINDINGS.—The Congress finds that—
(1) LIBOR is used as a benchmark rate in more than $200 trillion of contracts worldwide;

(2) a significant number of existing contracts that reference LIBOR do not provide for the use of a clearly defined or practicable replacement benchmark rate when LIBOR is discontinued; and

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

(b) PURPOSE.—It is the purpose—

(1) of this Act—

(A) to establish a clear and uniform process, on a nationwide basis, for replacing LIBOR in existing contracts the terms of which do not provide for the use of a clearly defined or practicable replacement benchmark rate, without affecting the ability of parties to use any appropriate benchmark rate in new contracts;

(B) to preclude litigation related to existing contracts the terms of which do not provide for the use of a clearly defined or practicable replacement benchmark rate; and
(C) to allow existing contracts that reference LIBOR but provide for the use of a clearly defined fallback and practicable replacement rate, to operate according to their terms; and

[(2) of section 6 to provide that modifications of existing contracts pursuant to this chapter do not result in recognition of gain or loss for Federal income tax purposes and to provide authority to the Secretary of the Treasury to provide clear guidance regarding the Federal income tax consequences of transitioning contracts that reference IBORs to replacement benchmark rates.]

SEC. 3. DEFINITIONS.

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

(1) “Benchmark” shall mean an index of interest rates or dividend rates that is used, in whole or in part, as the basis of or as a reference for calculating or determining any valuation, payment or other measurement.

(2) “Benchmark Administrator” means a person that publishes a Benchmark for use by third parties.
(3) “Benchmark Replacement” shall 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 in LIBOR, whether on a temporary, permanent, or indefinite basis, under or in respect of a LIBOR Contract.

(4) “Benchmark Replacement Conforming Changes” shall mean, with respect to any LIBOR Contract, any documented technical, administrative, or operational changes, alterations, or modifications that, in the reasonable judgment of a Calculating Person, are necessary or appropriate to permit the administration and calculation of the Board-Selected Benchmark Replacement under or in respect of such LIBOR Contract in a manner consistent with relevant market practice or recommendations for similar types of LIBOR Contracts and, to the extent practicable, the manner in which such LIBOR Contract was administered immediately prior to the LIBOR Replacement Date.

(5) “Board” means the Board of Governors of the Federal Reserve System.
(6)(A) “Board-Selected Benchmark Replacement” shall mean a Benchmark Replacement identified by the Board that is based on SOFR.

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

(i) apply to each LIBOR tenor; and

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

(7) “Calculating Person” shall mean, with respect to any LIBOR Contract, any person (which may be the Determining Person) responsible for calculating or determining any valuation, payment, or other measurement based on a Benchmark.

(8) “Determining Person” shall mean, with respect to any LIBOR Contract, any person with the authority, right, or obligation, including on a temporary basis, (as identified by the provisions of the
LIBOR Contract, or as identified by the governing law of the LIBOR Contract, as appropriate) to determine a Benchmark Replacement.

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

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

(11) “LIBOR Contract” shall mean, without limitation, any contract, agreement, indenture, organizational documents, guarantee, mortgage, deed of trust, lease, Security (whether representing debt or equity, and including any interest in a corporation, a partnership, or a limited liability company), instrument, or other obligation or asset that, by its terms, continues in any way to use LIBOR as a Benchmark as of the applicable LIBOR Replacement Date.
(12) “LIBOR Replacement Date” shall mean the first London banking day after June 30, 2023, unless the Board determines that any LIBOR tenor will cease to be published or cease to be representative on a different date.

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

(14) “SOFR” shall mean the Secured Overnight Financing Rate published by the Federal Reserve Bank of New York (or a successor administrator).

(15) “Tax-Relevant IBOR” shall mean LIBOR, any tenor of non-U.S. dollar currency rates formerly known as the London interbank offered rate as administered by ICE Benchmark Administration Limited (or any predecessor or successor administrator thereof), and any other interbank offered rates that are expected to cease.

(16) “Tax-Relevant IBOR Contract” shall mean, without limitation, any contract, agreement, mortgage, deed of trust, lease, Security (whether representing debt or equity, and including any interest in a corporation, a partnership, or a limited li-
ability company), instrument or other obligation that
        uses an IBOR as a Benchmark.]

        (17) “Tenor Spread Adjustment” shall mean—

        (A) 0.00644 percent for overnight LIBOR;
        (B) 0.11448 percent for 1-month LIBOR;
        (C) 0.26161 percent for 3-month LIBOR;
        (D) 0.42826 percent for 6-month LIBOR;
        and
        (E) 0.71513 percent for 12-month LIBOR.

SEC. 4. LIBOR CONTRACTS.

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

(b) On the LIBOR Replacement Date, any Fallback Provisions in a LIBOR Contract that provide for a Benchmark Replacement that is based in any way on any LIBOR value or require a person (other than a Benchmark Administrator) to conduct a poll, survey, or inquiries for quotes or information concerning interbank lending or deposit rates shall be disregarded as if not included in such LIBOR Contract and shall be deemed null and void and without any force or effect.
(c) Subject to subsection (g)(2), a Determining Person shall have authority under this Act, but shall not be required, to select the Board-Selected Benchmark Replacement as the Benchmark Replacement.

(d) Any selection by a Determining Person of the Board-Selected Benchmark Replacement pursuant to subsection (c) shall be—

(1) irrevocable;

(2) made by the earlier of the LIBOR Replacement Date and the latest date for selecting a Benchmark Replacement according to the terms of such LIBOR Contract; and

(3) used in any determinations of the Benchmark under or in respect of such LIBOR Contract occurring on and after the LIBOR Replacement Date.

(e) If a Determining Person has authority to select the Board-Selected Benchmark Replacement under subsection (c) but does not select a Benchmark Replacement by the date specified in subsection (d)(2), then, on the LIBOR Replacement Date, the Board-Selected Benchmark Replacement shall, by operation of law, be the Benchmark Replacement for the LIBOR Contract.

(f) If the Board-Selected Benchmark Replacement becomes the Benchmark Replacement for a LIBOR Con-
tract pursuant to subsection (a), (e), or (e) then all Benchmark Replacement Conforming Changes shall become an integral part of such LIBOR Contract by operation of law. For the avoidance of doubt, a Calculating Person shall not, unless explicitly required under the terms of the LIBOR Contract, be required to obtain consent from, or give advance notice to, any other person prior to the adoption of Benchmark Replacement Conforming Changes.

(g) The provisions of this Act shall not alter or impair—

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

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

(3) any LIBOR Contract subject to subsection (e) as to which a Determining Person does not elect to use a Board-Selected Benchmark Replacement pursuant to subsection (e), except to the extent that such LIBOR Contract is subject to subsection (b) or (e);
(4) the application to a Board-Selected Benchmark Replacement of any cap, floor, modifier, or spread adjustment to which LIBOR had been subject pursuant to the terms of a LIBOR Contract; or

(5) any provisions of Federal consumer financial law as defined in section 1002 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5481), and any Benchmark Replacement and the transition to it must be in accordance with such law.

SEC. 5. CONTINUITY OF CONTRACT AND SAFE HARBOR.

(a) A Board-Selected Benchmark Replacement and the selection or use of a Board-Selected Benchmark Replacement as a Benchmark Replacement under or in respect of a LIBOR Contract, as well as any Benchmark Replacement Conforming Changes, by operation of section 4 shall constitute—

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

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

(3) a replacement that is based on a methodology or information that is similar or comparable to LIBOR;
(4) substantial performance by any person of any right or obligation relating to or based on LIBOR; and

(5) a replacement that has historical fluctuations that are substantially similar to those of LIBOR for purposes of the Truth in Lending Act and its implementing regulations.

(b) Neither of (1) the selection or use of a Board-Selected Benchmark Replacement as a Benchmark Replacement or (2) the determination, implementation, or performance of Benchmark Replacement Conforming Changes, in each case by operation of section 4, shall (A) be deemed to impair or affect the right of any person to receive a payment, or to affect the amount or timing of such payment, under any LIBOR Contract or (B) have the effect of (i) discharging or excusing performance under any LIBOR Contract for any reason, claim, or defense (including, but not limited to, any force majeure or other provision in any LIBOR Contract), (ii) giving any person the right to unilaterally terminate or suspend performance under any LIBOR Contract, (iii) constituting a breach of any LIBOR Contract, or (iv) voiding or nullifying any LIBOR Contract.

(c) No person shall be subject to any claim or cause of action in law or equity or request for equitable relief,
or have liability for damages, arising out of or related to
the selection or use of a Board-Selected Benchmark Re-
placement or the determination, implementation, or per-
formance of Benchmark Replacement Conforming
Changes, in each case by operation of section 4; provided,
however, that any person (including a Calculating Person)
shall remain subject to any existing legal, regulatory, or
contractual obligations to correct servicing or other min-
isterial errors under or in respect of a LIBOR Contract.

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

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

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

(e) Except as provided in either subsections (a), (b),
or (c) of section 4, the provisions of this Act shall not
be interpreted as creating any negative inference or nega-
tive presumption regarding the validity or enforceability
of—
(1) any Benchmark Replacement (including any method for calculating, determining, or implementing an adjustment to the Benchmark Replacement to account for any historical differences between LIBOR and the Benchmark Replacement) that is not a Board-Selected Benchmark Replacement; or

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

SEC. 6. TAX TREATMENT AND TAX REGULATIONS FOR IBOR TRANSITION.

(a) None of—

(1) the selection or use of a Board-Selected Benchmark Replacement as a Benchmark Replacement,

(2) the determination, implementation or performance of Benchmark Replacement Conforming Changes, or

(3) the application to any LIBOR Contract of, or the agreement by parties thereto to terms consistent with, section 4,

shall be treated as a sale, exchange, or other disposition of property for purposes of section 1001 of the Internal Revenue Code of 1986.
(b) Not later than 180 days after the date of enactment of this Act, the Secretary of the Treasury shall issue such regulations as may be necessary or appropriate to carry out subsection (a) and address the Federal income tax consequences of transitioning a Tax-Relevant IBOR Contract to a replacement benchmark rate. Such regulations shall prioritize a smooth transition from the use of a Tax-Relevant IBOR and balance the need for a smooth transition from the use of a Tax-Relevant IBOR with the prevention of inappropriate tax planning.

SEC. 7. PREEMPTION.

(a) This Act and the regulations hereunder shall supersede any and all laws, statutes, rules, regulations, or standards of any State, the District of Columbia, or any territory or possession of the United States, insofar as they provide for the selection or use of a Benchmark Replacement or related conforming changes.

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

SEC. 8. TRUST INDENTURE ACT OF 1939.

Section 316 of the Trust Indenture Act of 1939 (15 U.S.C. 77ppp) is amended—
(1) by striking “and” after “of subsection (a),” in subsection (b); and

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

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

Section 438(b)(2)(I) of the Higher Education Act (20
U.S.C. 1087–1(b)(2)(I)) is amended by striking “of the
1-month London Inter Bank Offered Rate (LIBOR) for
United States dollars in effect for each of the days in such
quarter as compiled and released by the British Bankers
Association” and inserting “of 1-month LIBOR for
United States dollars in effect for each of the days in such
quarter as administered by ICE Benchmark Administra-
tion Limited (or any successor) or (as determined by the
Secretary) any replacement benchmark rate for contracts
established by the Board of Governors of the Federal Re-
serve System under the Adjustable Interest Rate (LIBOR)
Act of 2021.”.
SEC. 10. RULEMAKING.

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