

117TH CONGRESS
2D SESSION

S. 3844

To establish a clear and uniform process, on a nationwide basis, for replacing the London interbank offered rate in existing contracts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 15, 2022

Mr. TESTER (for himself, Mr. TILLIS, Mr. BROWN, and Mr. TOOMEY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To establish a clear and uniform process, on a nationwide basis, for replacing the London interbank offered rate in existing contracts, 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 “Economic Continuity
5 and Stability Act”.

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

7 (a) FINDINGS.—Congress finds that—

1 (1) LIBOR is used as a benchmark rate in
2 more than \$200,000,000,000,000 worth of contracts
3 worldwide;

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

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

13 (b) PURPOSE.—It is the purpose of this Act—

14 (1) to establish a clear and uniform process, on
15 a nationwide basis, for replacing LIBOR in existing
16 contracts the terms of which do not provide for the
17 use of a clearly defined or practicable replacement
18 benchmark rate, without affecting the ability of par-
19 ties to use any appropriate benchmark rate in new
20 contracts;

21 (2) to preclude litigation related to existing con-
22 tracts the terms of which do not provide for the use
23 of a clearly defined or practicable replacement
24 benchmark rate;

1 (3) to allow existing contracts that reference
2 LIBOR but provide for the use of a clearly defined
3 and practicable replacement rate, to operate accord-
4 ing to their terms;

5 (4) to provide that modifications of existing
6 contracts pursuant to this Act do not result in rec-
7 ognition of gain or loss for Federal income tax pur-
8 poses;

9 (5) to provide authority to the Secretary of the
10 Treasury to provide clear guidance regarding the
11 Federal income tax consequences for taxpayers with
12 respect to IBOR contracts transitioning away from
13 IBOR to an IBOR Benchmark Replacement; and

14 (6) to address LIBOR references in Federal
15 law.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) BENCHMARK.—The term “benchmark”
19 means an index of interest rates or dividend rates
20 that is used, in whole or in part, as the basis of or
21 as a reference for calculating or determining any
22 valuation, payment, or other measurement.

23 (2) BENCHMARK ADMINISTRATOR.—The term
24 “benchmark administrator” means a person that
25 publishes a benchmark for use by third parties.

1 (3) BENCHMARK REPLACEMENT.—The term
2 “benchmark replacement” means a benchmark, or
3 an interest rate or dividend rate (which may or may
4 not be based in whole or in part on a prior setting
5 of LIBOR), to replace LIBOR or any interest rate
6 or dividend rate based on LIBOR, whether on a
7 temporary, permanent, or indefinite basis, under or
8 with respect to a LIBOR contract.

9 (4) BENCHMARK REPLACEMENT CONFORMING
10 CHANGES.—The term “benchmark replacement con-
11 forming changes” means any technical, administra-
12 tive, or operational changes, alterations, or modifica-
13 tions that—

14 (A) the Board determines, in its discretion,
15 would address 1 or more issues affecting the
16 implementation, administration, and calculation
17 of the Board-selected benchmark replacement in
18 LIBOR contracts; or

19 (B) solely with respect to a LIBOR con-
20 tract that is not a consumer loan, in the rea-
21 sonable judgment of a calculating person, are
22 otherwise necessary or appropriate to permit
23 the implementation, administration, and cal-
24 culation of the Board-selected benchmark re-
25 placement under or with respect to a LIBOR

1 contract after giving due consideration to any
2 benchmark replacement conforming changes
3 under subparagraph (A).

4 (5) BOARD.—The term “Board” means the
5 Board of Governors of the Federal Reserve System.

6 (6) BOARD-SELECTED BENCHMARK REPLACE-
7 MENT.—The term “Board-selected benchmark re-
8 placement” means a benchmark replacement identi-
9 fied by the Board that is based on SOFR, including
10 any tenor spread adjustment pursuant to section
11 4(e).

12 (7) CALCULATING PERSON.—The term “calcu-
13 lating person” means, with respect to any LIBOR
14 contract, any person, including the determining per-
15 son, responsible for calculating or determining any
16 valuation, payment, or other measurement based on
17 a benchmark.

18 (8) CONSUMER; CREDIT.—The terms “con-
19 sumer” and “credit” have the meanings given the
20 terms in section 103 of the Truth in Lending Act
21 (15 U.S.C. 1602).

22 (9) CONSUMER LOAN.—The term “consumer
23 loan” means a consumer credit transaction.

24 (10) DETERMINING PERSON.—The term “deter-
25 mining person” means, with respect to any LIBOR

1 contract, any person with the authority, right, or ob-
2 ligation, including on a temporary basis (as identi-
3 fied by the LIBOR contract or by the governing law
4 of the LIBOR contract, as appropriate) to determine
5 a benchmark replacement.

6 (11) FALLBACK PROVISIONS.—The term “fall-
7 back provisions” means terms in a LIBOR contract
8 for determining a benchmark replacement, including
9 any terms relating to the date on which the bench-
10 mark replacement becomes effective.

11 (12) IBOR.—The term “IBOR” means
12 LIBOR, any tenor of non-U.S. dollar currency rates
13 formerly known as the London interbank offered
14 rate as administered by ICE Benchmark Adminis-
15 tration Limited (or any predecessor or successor ad-
16 ministrator thereof), and any other interbank offered
17 rates that are expected to cease.

18 (13) IBOR BENCHMARK REPLACEMENT.—The
19 term “IBOR benchmark replacement” means a
20 benchmark, or an interest rate or dividend rate
21 (which may or may not be based in whole or in part
22 on a prior setting of an IBOR), to replace an IBOR
23 or any interest rate or dividend rate based on an
24 IBOR, whether on a temporary, permanent, or in-

1 definite basis, under or with respect to an IBOR
2 contract.

3 (14) IBOR CONTRACT.—The term “IBOR con-
4 tract” means any contract, agreement, indenture, or-
5 ganizational document, guarantee, mortgage, deed of
6 trust, lease, security (whether representing debt or
7 equity, including any interest in a corporation, a
8 partnership, or a limited liability company), instru-
9 ment, or other obligation or asset that, by its terms,
10 continues in any way to use an IBOR as a bench-
11 mark.

12 (15) LIBOR.—The term “LIBOR”—

13 (A) means the overnight and 1-, 3-, 6-,
14 and 12-month tenors of U.S. dollar LIBOR
15 (formerly known as the London interbank of-
16 fered rate) as administered by ICE Benchmark
17 Administration Limited (or any predecessor or
18 successor administrator thereof); and

19 (B) does not include the 1-week or 2-
20 month tenors of U.S. dollar LIBOR.

21 (16) LIBOR CONTRACT.—The term “LIBOR
22 contract” means any contract, agreement, indenture,
23 organizational document, guarantee, mortgage, deed
24 of trust, lease, security (whether representing debt
25 or equity, including any interest in a corporation, a

1 partnership, or a limited liability company), instru-
2 ment, or other obligation or asset that, by its terms,
3 uses LIBOR as a benchmark.

4 (17) LIBOR REPLACEMENT DATE.—The term
5 “LIBOR replacement date” means the first London
6 banking day after June 30, 2023, unless the Board
7 determines that any LIBOR tenor will cease to be
8 published or cease to be representative on a different
9 date.

10 (18) SECURITY.—The term “security” has the
11 meaning given the term in section 2(a) of the Secu-
12 rities Act of 1933 (15 U.S.C. 77b(a)).

13 (19) SOFR.—The term “SOFR” means the
14 Secured Overnight Financing Rate published by the
15 Federal Reserve Bank of New York (or a successor
16 administrator).

17 (20) TENOR SPREAD ADJUSTMENT.—The term
18 “tenor spread adjustment” means—

19 (A) 0.00644 percent for overnight LIBOR;

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

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

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

23 and

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

1 **SEC. 4. LIBOR CONTRACTS.**

2 (a) IN GENERAL.—On the LIBOR replacement date,
3 the Board-selected benchmark replacement shall be the
4 benchmark replacement for any LIBOR contract that,
5 after giving any effect to subsection (b)—

6 (1) contains no fallback provisions; or

7 (2) contains fallback provisions that identify
8 neither—

9 (A) a specific benchmark replacement; nor

10 (B) a determining person.

11 (b) FALLBACK PROVISIONS.—On the LIBOR re-
12 placement date, any reference in the fallback provisions
13 of a LIBOR contract to—

14 (1) a benchmark replacement that is based in
15 any way on any LIBOR value, except to account for
16 the difference between LIBOR and the benchmark
17 replacement; or

18 (2) a requirement that a person (other than a
19 benchmark administrator) conduct a poll, survey, or
20 inquiries for quotes or information concerning inter-
21 bank lending or deposit rates,

22 shall be disregarded as if not included in the fallback pro-
23 visions of such LIBOR contract and shall be deemed null
24 and void and without any force or effect.

25 (c) AUTHORITY OF DETERMINING PERSON.—

1 (1) IN GENERAL.—Subject to subsection (f)(2),
2 a determining person may select the Board-selected
3 benchmark replacement as the benchmark replace-
4 ment.

5 (2) SELECTION.—Any selection by a deter-
6 mining person of the Board-selected benchmark re-
7 placement pursuant to paragraph (1) shall be—

8 (A) irrevocable;

9 (B) made by the earlier of the LIBOR re-
10 placement date and the latest date for selecting
11 a benchmark replacement according to the
12 terms of the LIBOR contract; and

13 (C) used in any determinations of the
14 benchmark under or with respect to the LIBOR
15 contract occurring on and after the LIBOR re-
16 placement date.

17 (3) NO SELECTION.—If a determining person
18 does not select a benchmark replacement by the date
19 specified in paragraph (2)(B), the Board-selected
20 benchmark replacement, on and after the LIBOR re-
21 placement date, shall be the benchmark replacement
22 for the LIBOR contract.

23 (d) CONFORMING CHANGES.—

24 (1) IN GENERAL.—If the Board-selected bench-
25 mark replacement becomes the benchmark replace-

1 ment for a LIBOR contract pursuant to subsection
2 (a) or (c), all benchmark replacement conforming
3 changes shall become an integral part of the LIBOR
4 contract.

5 (2) NO CONSENT REQUIRED.—A calculating
6 person shall not be required to obtain consent from
7 any other person prior to the adoption of benchmark
8 replacement conforming changes.

9 (e) ADJUSTMENT BY BOARD.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), on the LIBOR replacement date, the
12 Board shall adjust the Board-selected benchmark re-
13 placement for each category of LIBOR contract that
14 the Board may identify to include the relevant tenor
15 spread adjustment.

16 (2) CONSUMER LOANS.—For LIBOR contracts
17 that are consumer loans, the Board shall adjust the
18 Board-selected benchmark replacement as follows:

19 (A) During the 1-year period beginning on
20 the LIBOR replacement date, incorporate an
21 amount, to be determined for any business day
22 during that period, that transitions linearly
23 from the difference between the Board-selected
24 benchmark replacement and the corresponding
25 LIBOR tenor determined as of the day imme-

1 diately before the LIBOR replacement date to
2 the relevant tenor spread adjustment.

3 (B) On and after the date that is 1 year
4 after the LIBOR replacement date, incorporate
5 the relevant tenor spread adjustment.

6 (f) RULE OF CONSTRUCTION.—Nothing in this Act
7 may be construed to alter or impair—

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

10 (2) except as provided in subsection (b), any
11 LIBOR contract that contains fallback provisions
12 that identify a benchmark replacement that is not
13 based in any way on any LIBOR value (including
14 the prime rate or the effective Federal funds rate);

15 (3) except as provided in subsection (b) or
16 (c)(3), any LIBOR contract subject to subsection
17 (c)(1) as to which a determining person does not
18 elect to use a Board-selected benchmark replacement
19 pursuant to that subsection;

20 (4) the application to a Board-selected bench-
21 mark replacement of any cap, floor, modifier, or
22 spread adjustment to which LIBOR had been sub-
23 ject pursuant to the terms of a LIBOR contract;

24 (5) any provision of Federal consumer financial
25 law that—

1 (A) requires creditors to notify borrowers
2 regarding a change-in-terms; or

3 (B) governs the reevaluation of rate in-
4 creases on credit card accounts under open-
5 ended (not home-secured) consumer credit
6 plans; or

7 (6) except as provided in section 5(c), the rights
8 or obligations of any person, or the authorities of
9 any agency, under Federal consumer financial law,
10 as defined in section 1002 of the Consumer Finan-
11 cial Protection Act of 2010 (12 U.S.C. 5481).

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

13 (a) IN GENERAL.—A Board-selected benchmark re-
14 placement and the selection or use of a Board-selected
15 benchmark replacement as a benchmark replacement
16 under or with respect to a LIBOR contract, and any
17 benchmark replacement conforming changes, shall con-
18 stitute—

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

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

1 (3) a replacement that is based on a method-
2 ology or information that is similar or comparable to
3 LIBOR;

4 (4) substantial performance by any person of
5 any right or obligation relating to or based on
6 LIBOR; and

7 (5) a replacement that has historical fluctua-
8 tions that are substantially similar to those of
9 LIBOR for purposes of the Truth in Lending Act
10 (15 U.S.C. 1601 note) and regulations promulgated
11 under that Act.

12 (b) NO IMPAIRMENT.—Neither the selection or use
13 of a Board-selected benchmark replacement as a bench-
14 mark replacement nor the determination, implementation,
15 or performance of benchmark replacement conforming
16 changes under section 4 may—

17 (1) be deemed to impair or affect the right of
18 any person to receive a payment, or to affect the
19 amount or timing of such payment, under any
20 LIBOR contract; or

21 (2) have the effect of—

22 (A) discharging or excusing performance
23 under any LIBOR contract for any reason,
24 claim, or defense (including any force majeure
25 or other provision in any LIBOR contract);

1 (B) giving any person the right to unilaterally
2 terminate or suspend performance under
3 any LIBOR contract;

4 (C) constituting a breach of any LIBOR
5 contract; or

6 (D) voiding or nullifying any LIBOR con-
7 tract.

8 (c) SAFE HARBOR.—No person shall be subject to
9 any claim or cause of action in law or equity or request
10 for equitable relief, or have liability for damages, arising
11 out of—

12 (1) the selection or use of a Board-selected
13 benchmark replacement;

14 (2) the implementation of benchmark replace-
15 ment conforming changes; or

16 (3) with respect to a LIBOR contract that is
17 not a consumer loan, the determination of bench-
18 mark replacement conforming changes,

19 in each case after giving effect to the provisions of section
20 4; provided, however, that in each case any person (includ-
21 ing a calculating person) shall remain subject to the terms
22 of a LIBOR contract that are not affected by this Act
23 and any existing legal, regulatory, or contractual obliga-
24 tions to correct servicing or other ministerial errors under
25 or with respect to a LIBOR contract.

1 (d) SELECTION.—The selection or use of a Board-
2 selected benchmark replacement or the determination, im-
3 plementation, or performance of benchmark replacement
4 conforming changes under section 4 shall not be deemed
5 to—

6 (1) be an amendment or modification of any
7 LIBOR contract; or

8 (2) prejudice, impair, or affect the rights, inter-
9 ests, or obligations of any person under or with re-
10 spect to any LIBOR contract.

11 (e) NO NEGATIVE INFERENCE.—Except as provided
12 in subsection (a), (b), or (c)(1) of section 4, nothing in
13 this Act may be construed to create any negative inference
14 or negative presumption regarding the validity or enforce-
15 ability of—

16 (1) any benchmark replacement (including any
17 method for calculating, determining, or imple-
18 menting an adjustment to the benchmark replace-
19 ment to account for any historical differences be-
20 tween LIBOR and the benchmark replacement) that
21 is not a Board-selected benchmark replacement; or

22 (2) any changes, alterations, or modifications to
23 or with respect to a LIBOR contract that are not
24 benchmark replacement conforming changes.

1 **SEC. 6. TAX TREATMENT AND TAX REGULATIONS FOR**
2 **LIBOR TRANSITION.**

3 (a) IN GENERAL.—None of—

4 (1) the selection or use of a Board-selected
5 benchmark replacement as a benchmark replace-
6 ment,

7 (2) the determination, implementation, or per-
8 formance of benchmark replacement conforming
9 changes, or

10 (3) the application to any LIBOR contract of,
11 or the agreement by parties thereto to terms con-
12 sistent with, section 4,

13 shall be treated as a sale, exchange, or other disposition
14 of property for purposes of section 1001 of the Internal
15 Revenue Code of 1986.

16 (b) GUIDANCE.—The Secretary of the Treasury (or
17 the Secretary's delegate) shall issue such regulations or
18 other guidance as may be necessary or appropriate to
19 carry out subsection (a) and address the Federal income
20 tax consequences for taxpayers with respect to IBOR con-
21 tracts transitioning away from IBOR to an IBOR bench-
22 mark replacement.

23 **SEC. 7. BENCHMARK FOR LOANS.**

24 (a) DEFINITIONS.—In this section:

1 (1) BANK.—The term “bank” means an insti-
2 tution subject to examination by a Federal financial
3 institutions regulatory agency.

4 (2) COVERED ACTION.—The term “covered ac-
5 tion” means—

6 (A) the initiation by a Federal supervisory
7 agency of an enforcement action, including the
8 issuance of a cease-and-desist order; or

9 (B) the issuance by a Federal supervisory
10 agency of a matter requiring attention, a mat-
11 ter requiring immediate attention; or a matter
12 requiring board attention resulting from a su-
13 pervisory activity conducted by the Federal su-
14 pervisory agency.

15 (3) FEDERAL FINANCIAL INSTITUTIONS REGU-
16 LATORY AGENCY.—The term “Federal financial in-
17 stitutions regulatory agencies” has the meaning
18 given the term in section 1003 of the Federal Finan-
19 cial Institutions Examination Council Act of 1978
20 (12 U.S.C. 3302).

21 (4) FEDERAL SUPERVISORY AGENCY.—The
22 term “Federal supervisory agency” means an agency
23 listed in subparagraphs (A) through (H) of section
24 1101(7) of the Right to Financial Privacy Act of
25 1978 (12 U.S.C. 3401(7)).

1 (5) NON-IBOR LOAN.—The term “non-IBOR
2 loan” means any loan that, by its terms, does not
3 use in any way LIBOR, any tenor of non-U.S. dollar
4 currency rates formerly known as the London inter-
5 bank offered rate as administered by ICE Bench-
6 mark Administration Limited (or any predecessor or
7 successor administrator thereof), and any other
8 interbank offered rates that are expected to cease, as
9 a benchmark.

10 (b) BENCHMARKS USED BY BANKS.—With respect to
11 a benchmark used by a bank—

12 (1) the bank, in any non-IBOR loan made be-
13 fore, on, or after the date of enactment of this Act,
14 may use any benchmark, including a benchmark
15 that is not SOFR, that the bank determines to be
16 appropriate for the funding model of the bank; the
17 needs of the customers of the bank; and the prod-
18 ucts, risk profile, risk management capabilities, and
19 operational capabilities of the bank; provided, how-
20 ever, that the use of any benchmark shall remain
21 subject to the terms of the non-IBOR loan, and ap-
22 plicable law; and

23 (2) no Federal supervisory agency may take
24 any covered action against the bank solely because
25 that benchmark is not SOFR.

1 **SEC. 8. PREEMPTION.**

2 This Act, and regulations promulgated under this
3 Act, shall supersede any provision of any State or local
4 law, statute, rule, regulation, or standard—

5 (1) relating to the selection or use of a bench-
6 mark replacement or related conforming changes; or

7 (2) expressly limiting the manner of calculating
8 interest, including the compounding of interest, as
9 that provision applies to the selection or use of a
10 Board-selected benchmark replacement or bench-
11 mark replacement conforming changes.

12 **SEC. 9. TRUST INDENTURE ACT OF 1939.**

13 Section 316(b) of the Trust Indenture Act of 1939
14 (15 U.S.C. 77ppp(b)) is amended—

15 (1) by striking “, except as” and inserting “,
16 except—

17 “(1) as”;

18 (2) in paragraph (1), as so designated, by strik-
19 ing “(a), and except that” and inserting “(a);

20 “(2) that”;

21 (3) in paragraph (2), as so designated, by strik-
22 ing the period at the end and inserting “; and”; and

23 (4) by adding at the end the following:

24 “(3) that the right of any holder of any inden-
25 ture security to receive payment of the principal of
26 and interest on such indenture security shall not be

1 deemed to be impaired or affected by any change oc-
 2 ccurring by the application of section 4 of the Eco-
 3 nomic Continuity and Stability Act to any indenture
 4 security.”.

5 **SEC. 10. AMENDMENT TO THE HIGHER EDUCATION ACT OF**
 6 **1965.**

7 Section 438(b)(2)(I) of the Higher Education Act of
 8 1965 (20 U.S.C. 1087–1(b)(2)(I)) is amended by adding
 9 at the end the following:

10 “(viii) REVISED CALCULATION RULE
 11 TO ADDRESS INSTANCES WHERE 1-MONTH
 12 USD LIBOR CEASES OR IS NON-REP-
 13 RESENTATIVE.—

14 “(I) SUBSTITUTE REFERENCE
 15 INDEX.—The provisions of this clause
 16 apply to loans for which the special al-
 17 lowance payment would otherwise be
 18 calculated pursuant to clause (vii).

19 “(II) CALCULATION BASED ON
 20 SOFR.—For loans described in sub-
 21 clause (III) or (IV), the special allow-
 22 ance payment described in this sub-
 23 clause shall be substituted for the
 24 payment provided under clause (vii).
 25 For each calendar quarter, the for-

1 mula for computing the special allow-
2 ance that would otherwise apply under
3 clause (vii) shall be revised by sub-
4 stituting ‘of the quotes of the 30-day
5 Average Secured Overnight Financing
6 Rate (SOFR) in effect for each of the
7 days in such quarter as published by
8 the Federal Reserve Bank of New
9 York (or a successor administrator),
10 adjusted daily by adding the tenor
11 spread adjustment, as that term is de-
12 fined in the Economic Continuity and
13 Stability Act, for 1-month LIBOR
14 contracts of 0.11448 percent’ for ‘of
15 the 1-month London Inter Bank Of-
16 fered Rate (LIBOR) for United
17 States dollars in effect for each of the
18 days in such quarter as compiled and
19 released by the British Bankers Asso-
20 ciation’. The special allowance calcula-
21 tion for loans subject to clause (vii)
22 shall otherwise remain in effect.

23 “(III) LOANS ELIGIBLE FOR
24 SOFR-BASED CALCULATION.—Except
25 as provided in subclause (IV), the spe-

1 cial allowance payment calculated
2 under subclause (II) shall apply to all
3 loans for which the holder (or, if the
4 holder acts as an eligible lender trust-
5 ee for the beneficial owner of the loan,
6 the beneficial owner of the loan) at
7 any time after the effective date of
8 this clause notifies the Secretary that
9 the holder or beneficial owner affirma-
10 tively and permanently elects to waive
11 all contractual, statutory, or other
12 legal rights to a special allowance paid
13 under clause (vii) or to the special al-
14 lowance paid pursuant to any other
15 formula that was previously in effect
16 with respect to such loan, and accepts
17 the rate described in subclause (II).
18 Any such waiver shall apply to all
19 loans then held, or to be held from
20 time to time, by such holder or bene-
21 ficial owner; provided that, due to the
22 need to obtain the approval of, dem-
23 onstrated to the satisfaction of the
24 Secretary—

1 “(aa) one or more third par-
2 ties with a legal or beneficial in-
3 terest in loans eligible for the
4 SOFR-based calculation; or

5 “(bb) a nationally recog-
6 nized rating organization assign-
7 ing a rating to a financing se-
8 cured by loans otherwise eligible
9 for the SOFR-based calculation,
10 the holder of the loan (or, if the hold-
11 er acts as an eligible lender trustee
12 for the beneficial owner of the loan,
13 the beneficial owner of the loan) may
14 elect to apply the rate described in
15 subclause (II) to specified loan port-
16 folios established for financing pur-
17 poses by separate notices with dif-
18 ferent effective dates. The special al-
19 lowance rate based on SOFR shall be
20 effective with respect to a portfolio as
21 of the first day of the calendar quar-
22 ter following the applicable effective
23 date of the waiver received by the Sec-
24 retary from the holder or beneficial
25 owner and shall permanently and ir-

1 revocably continue for all subsequent
2 quarters.

3 “(IV) FALLBACK PROVISIONS.—

4 “(aa) In the event that a
5 holder or beneficial owner has
6 not elected to waive its rights to
7 a special allowance payment
8 under clause (vii) with respect to
9 a portfolio with an effective date
10 of the waiver prior to the first
11 of—

12 “(AA) the date on
13 which the ICE Benchmark
14 Administration (‘IBA’) has
15 permanently or indefinitely
16 stopped providing the 1-
17 month United States Dollar
18 LIBOR (‘1-month USD
19 LIBOR’) to the general pub-
20 lic;

21 “(BB) the effective
22 date of an official public
23 statement by the IBA or its
24 regulator that the 1-month
25 USD LIBOR is no longer

1 reliable or no longer rep-
2 resentative; or
3 “ (CC) the LIBOR re-
4 placement date, as defined
5 in section 3 of the Economic
6 Continuity and Stability Act,
7 the special allowance rate calcula-
8 tion as described in subclause
9 (II) shall, by operation of law,
10 apply to all loans in such port-
11 folio.
12 “(bb) In such event—
13 “(AA) the last deter-
14 mined rate of special allow-
15 ance based on 1-month USD
16 LIBOR will continue to
17 apply until the end of the
18 then current calendar quar-
19 ter; and
20 “(BB) the special al-
21 lowance rate calculation as
22 described in subclause (II)
23 shall become effective as of
24 the first day of the following
25 calendar quarter and remain

1 in effect for all subsequent
2 calendar quarters.”.

3 **SEC. 11. RULEMAKING.**

4 Not later than 180 days after the date of enactment
5 of this Act, the Board shall promulgate regulations to
6 carry out this Act.

○