

Federal consumer financial law, as defined in section 5481 of this title.

(Pub. L. 117-103, div. U, §104, Mar. 15, 2022, 136 Stat. 828.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (f), was in the original “this division”, meaning div. U of Pub. L. 117-103, Mar. 15, 2022, 136 Stat. 825, known as the Adjustable Interest Rate (LIBOR) Act, which is classified principally to this chapter. For complete classification of div. U to the Code, see Short Title note set out under section 5801 of this title and Tables.

§ 5804. Continuity of contract and safe harbor

(a) In general

A Board-selected benchmark replacement and the selection or use of a Board-selected benchmark replacement as a benchmark replacement under or with respect to a LIBOR contract, and any benchmark replacement conforming changes, 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 (15 U.S.C. 1601 note)¹ and regulations promulgated under that division.²

(b) No impairment

Neither the selection or use of a Board-selected benchmark replacement as a benchmark replacement nor the determination, implementation, or performance of benchmark replacement conforming changes under section 5803 of this title may—

- (1) 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
- (2) have the effect of—
 - (A) discharging or excusing performance under any LIBOR contract for any reason, claim, or defense (including any force majeure or other provision in any LIBOR contract);
 - (B) giving any person the right to unilaterally terminate or suspend performance under any LIBOR contract;
 - (C) constituting a breach of any LIBOR contract; or
 - (D) voiding or nullifying any LIBOR contract.

(c) Safe harbor

No person shall be subject to any claim or cause of action in law or equity or request for

¹ So in original. Probably should be “(15 U.S.C. 1601 et seq.)”.

² So in original. Probably should be “that Act.”

equitable relief, or have liability for damages, arising out of—

- (1) the selection or use of a Board-selected benchmark replacement;
- (2) the implementation of benchmark replacement conforming changes; or
- (3) with respect to a LIBOR contract that is not a consumer loan, the determination of benchmark replacement conforming changes,

in each case after giving effect to the provisions of section 5803 of this title; provided, however, that in each case any person (including a calculating person) shall remain subject to the terms of a LIBOR contract that are not affected by this chapter and any existing legal, regulatory, or contractual obligations to correct servicing or other ministerial errors under or with respect to a LIBOR contract.

(d) Selection

The selection or use of a Board-selected benchmark replacement or the determination, implementation, or performance of benchmark replacement conforming changes under section 5803 of this title shall not be deemed to—

- (1) be an amendment or modification of any LIBOR contract; or
- (2) prejudice, impair, or affect the rights, interests, or obligations of any person under or with respect to any LIBOR contract.

(e) No negative inference

Except as provided in subsections³ (a), (b), or (c)(1) of section 5803 of this title, nothing in this chapter may be construed to create any negative inference or negative 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 with respect to a LIBOR contract that are not benchmark replacement conforming changes.

(Pub. L. 117-103, div. U, §105, Mar. 15, 2022, 136 Stat. 830.)

Editorial Notes

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (a)(5), is title I of Pub. L. 90-321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 101 of Pub. L. 90-321, set out as a Short Title note under section 1601 of Title 15 and Tables.

This chapter, referred to in subsections (c) and (e), was in the original “this division”, meaning div. U of Pub. L. 117-103, Mar. 15, 2022, 136 Stat. 825, known as the Adjustable Interest Rate (LIBOR) Act, which is classified principally to this chapter. For complete classification of div. U to the Code, see Short Title note set out under section 5801 of this title and Tables.

§ 5805. Benchmark for loans

(a) Definitions

In this section:

³ So in original. Probably should be “subsection”.