

Union Calendar No. 147

117TH CONGRESS
1ST SESSION

H. R. 4616

[Report No. 117–206, Part I]

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

DECEMBER 7, 2021

Reported from the Committee on Financial Services with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

DECEMBER 7, 2021

Committees on Ways and Means and Education and Labor discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on July 22, 2021]

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 Rate*
5 *(LIBOR) Act of 2021”.*

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

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

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

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

14 *(3) the cessation or non-representativeness of*
15 *LIBOR could result in disruptive litigation related to*
16 *existing contracts that do not provide for the use of*
17 *a clearly defined or practicable replacement bench-*
18 *mark rate.*

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

20 *(1) to establish a clear and uniform process, on*
21 *a nationwide basis, for replacing LIBOR in existing*
22 *contracts the terms of which do not provide for the use*
23 *of a clearly defined or practicable replacement bench-*
24 *mark rate, without affecting the ability of parties to*

1 *use any appropriate benchmark rate in new con-*
2 *tracts;*

3 *(2) to preclude litigation related to existing con-*
4 *tracts the terms of which do not provide for the use*
5 *of a clearly defined or practicable replacement bench-*
6 *mark rate; and*

7 *(3) to allow existing contracts that reference*
8 *LIBOR but provide for the use of a clearly defined*
9 *fallback and practicable replacement rate, to operate*
10 *according to their terms.*

11 *(c) RULE OF CONSTRUCTION.—Nothing in this Act*
12 *shall be construed to disfavor the use of any benchmark rate*
13 *on a prospective basis.*

14 **SEC. 3. DEFINITIONS.**

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

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

22 *(2) “Benchmark Administrator” means a person*
23 *that publishes a Benchmark for use by third parties.*

24 *(3) “Benchmark Replacement” shall mean a*
25 *Benchmark, or an interest rate or dividend rate*

1 *(which may or may not be based in whole or in part*
2 *on a prior setting of LIBOR), to replace LIBOR or*
3 *any interest rate or dividend rate based on LIBOR,*
4 *whether on a temporary, permanent, or indefinite*
5 *basis, under or in respect of a LIBOR Contract.*

6 (4) *“Benchmark Replacement Conforming*
7 *Changes” shall mean any technical, administrative,*
8 *or operational changes, alterations, or modifications*
9 *that—*

10 (A) *the Board establishes for the purpose of*
11 *facilitating the implementation, administration,*
12 *and calculation of the Board-Selected Benchmark*
13 *Replacement; or*

14 (B) *in the reasonable judgment of a Calculating*
15 *Person, are otherwise necessary or appropriate*
16 *to permit the implementation, administration,*
17 *and calculation of the Board-Selected*
18 *Benchmark Replacement under or in respect of a*
19 *LIBOR Contract after giving due consideration*
20 *to any Benchmark Replacement Conforming*
21 *Changes under subparagraph (A).*

22 (5) *“Board” means the Board of Governors of the*
23 *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 LIBOR
 6 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-Se-
 12 lected Benchmark Replacement and LIBOR im-
 13 mediately before the LIBOR Replacement Date
 14 and shall incorporate the relevant Tenor Spread
 15 Adjustment over a one-year transition period.

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

21 (8) “Consumer Loan” shall mean a consumer
 22 credit transaction. For purposes of this paragraph,
 23 the terms “consumer” and “credit” have the meaning
 24 given those terms, respectively, under section 103 of
 25 the Truth in Lending Act (15 U.S.C. 1602).

1 (9) “*Determining Person*” shall mean, with re-
2 spect to any *LIBOR Contract*, any person with the
3 authority, right, or obligation, including on a tem-
4 porary basis, (as identified by the provisions of the
5 *LIBOR Contract*, or as identified by the governing
6 law of the *LIBOR Contract*, as appropriate) to deter-
7 mine a *Benchmark Replacement*.

8 (10) “*Fallback Provisions*” shall mean terms in
9 a *LIBOR Contract* for determining a *Benchmark Re-*
10 placement, including any terms relating to the date
11 on which the *Benchmark Replacement* becomes effec-
12 tive.

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

20 (12) “*LIBOR Contract*” shall mean, without
21 limitation, any contract, agreement, indenture, orga-
22 nizational documents, guarantee, mortgage, deed of
23 trust, lease, Security (whether representing debt or eq-
24 uity, and including any interest in a corporation, a
25 partnership, or a limited liability company), instru-

1 *ment, or other obligation or asset that, by its terms,*
 2 *continues in any way to use LIBOR as a Benchmark*
 3 *as of the applicable LIBOR Replacement Date.*

4 (13) “LIBOR Replacement Date” shall mean the
 5 *first London banking day after June 30, 2023, unless*
 6 *the Board determines that any LIBOR tenor will*
 7 *cease to be published or cease to be representative on*
 8 *a different date.*

9 (14) “Security” shall have the meaning assigned
 10 *to such term in section 2(a) of the Securities Act of*
 11 *1933 (15 U.S.C. 77b(a)).*

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

15 (16) “Tenor Spread Adjustment” shall mean—
 16 (A) 0.00644 percent for overnight LIBOR;
 17 (B) 0.11448 percent for 1-month LIBOR;
 18 (C) 0.26161 percent for 3-month LIBOR;
 19 (D) 0.42826 percent for 6-month LIBOR;
 20 *and*
 21 (E) 0.71513 percent for 12-month LIBOR.

22 **SEC. 4. LIBOR CONTRACTS.**

23 (a) *On the LIBOR Replacement Date, the Board-Se-*
 24 *lected Benchmark Replacement shall, by operation of law,*

1 *be the Benchmark Replacement for any LIBOR Contract*
 2 *that, after giving any effect to subsection (b)—*

3 *(1) contains no Fallback Provisions; or*

4 *(2) contains Fallback Provisions that identify*
 5 *neither—*

6 *(A) a specific Benchmark Replacement; nor*

7 *(B) a Determining Person.*

8 *(b) On the LIBOR Replacement Date, any references*
 9 *in the Fallback Provisions of a LIBOR Contract to—*

10 *(1) a Benchmark Replacement that is based in*
 11 *any way on any LIBOR value, except to account for*
 12 *the difference between LIBOR and the Benchmark Re-*
 13 *placement, or*

14 *(2) a requirement that a person (other than a*
 15 *Benchmark Administrator) conduct a poll, survey, or*
 16 *inquiries for quotes or information concerning inter-*
 17 *bank lending or deposit rates,*

18 *shall be disregarded as if not included in the Fallback Pro-*
 19 *visions of such LIBOR Contract and shall be deemed null*
 20 *and void and without any force or effect.*

21 *(c) Subject to subsection (g)(2), a Determining Person*
 22 *shall have authority under this Act, but shall not be re-*
 23 *quired, to select the Board-Selected Benchmark Replacement*
 24 *as the Benchmark Replacement.*

1 (d) *Any selection by a Determining Person of the*
 2 *Board-Selected Benchmark Replacement pursuant to sub-*
 3 *section (c) shall be—*

4 (1) *irrevocable;*

5 (2) *made by the earlier of the LIBOR Replace-*
 6 *ment Date and the latest date for selecting a Bench-*
 7 *mark Replacement according to the terms of such*
 8 *LIBOR Contract; and*

9 (3) *used in any determinations of the Bench-*
 10 *mark under or in respect of such LIBOR Contract oc-*
 11 *curring on and after the LIBOR Replacement Date.*

12 (e) *If a Determining Person has authority to select the*
 13 *Board-Selected Benchmark Replacement under subsection*
 14 *(c) but does not select a Benchmark Replacement by the*
 15 *date specified in subsection (d)(2), then, on the LIBOR Re-*
 16 *placement Date, the Board-Selected Benchmark Replace-*
 17 *ment shall, by operation of law, be the Benchmark Replace-*
 18 *ment for the LIBOR Contract.*

19 (f) *If the Board-Selected Benchmark Replacement be-*
 20 *comes the Benchmark Replacement for a LIBOR Contract*
 21 *pursuant to subsection (a), (c), or (e) then all Benchmark*
 22 *Replacement Conforming Changes shall become an integral*
 23 *part of such LIBOR Contract by operation of law. For the*
 24 *avoidance of doubt, a Calculating Person shall not be re-*

1 *quired to obtain consent from any other person prior to the*
2 *adoption of Benchmark Replacement Conforming Changes.*

3 *(g) The provisions of this Act shall not alter or im-*
4 *pair—*

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

7 *(2) any LIBOR Contract that contains Fallback*
8 *Provisions that identify a Benchmark Replacement*
9 *that is not based in any way on any LIBOR value*
10 *(including, but not limited to, the prime rate or the*
11 *Effective Federal Funds Rate), except that such*
12 *LIBOR Contract shall be subject to subsection (b);*

13 *(3) any LIBOR Contract subject to subsection*
14 *(c) as to which a Determining Person does not elect*
15 *to use a Board-Selected Benchmark Replacement pur-*
16 *suant to subsection (c), except to the extent that such*
17 *LIBOR Contract is subject to subsection (b) or (e);*

18 *(4) the application to a Board-Selected Bench-*
19 *mark Replacement of any cap, floor, modifier, or*
20 *spread adjustment to which LIBOR had been subject*
21 *pursuant to the terms of a LIBOR Contract; or*

22 *(5) any provisions of Federal consumer financial*
23 *law that requires creditors to notify borrowers regard-*
24 *ing a change-in-terms.*

1 (h) *Except as provided in section 5(c), the provisions*
 2 *of this Act shall not alter or impair the rights or obligations*
 3 *of any person, or the authorities of any agency, under Fed-*
 4 *eral consumer financial law (as defined in section 1002(14)*
 5 *of the Dodd-Frank Wall Street Reform and Consumer Pro-*
 6 *tection Act (12 U.S.C. 5481(14)).*

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

8 (a) *A Board-Selected Benchmark Replacement and the*
 9 *selection or use of a Board-Selected Benchmark Replace-*
 10 *ment as a Benchmark Replacement under or in respect of*
 11 *a LIBOR Contract, as well as any Benchmark Replacement*
 12 *Conforming Changes, by operation of section 4 shall con-*
 13 *stitute—*

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

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

18 (3) *a replacement that is based on a methodology*
 19 *or information that is similar or comparable to*
 20 *LIBOR;*

21 (4) *substantial performance by any person of*
 22 *any right or obligation relating to or based on*
 23 *LIBOR; and*

24 (5) *a replacement that has historical fluctuations*
 25 *that are substantially similar to those of LIBOR for*

1 *purposes of the Truth in Lending Act and its imple-*
2 *menting regulations.*

3 *(b) Neither of (1) the selection or use of a Board-Se-*
4 *lected Benchmark Replacement as a Benchmark Replace-*
5 *ment or (2) the determination, implementation, or perform-*
6 *ance of Benchmark Replacement Conforming Changes, in*
7 *each case by operation of section 4, shall (A) be deemed to*
8 *impair or affect the right of any person to receive a pay-*
9 *ment, or to affect the amount or timing of such payment,*
10 *under any LIBOR Contract or (B) have the effect of (i)*
11 *discharging or excusing performance under any LIBOR*
12 *Contract for any reason, claim, or defense (including, but*
13 *not limited to, any force majeure or other provision in any*
14 *LIBOR Contract), (ii) giving any person the right to uni-*
15 *laterally terminate or suspend performance under any*
16 *LIBOR Contract, (iii) constituting a breach of any LIBOR*
17 *Contract, or (iv) voiding or nullifying any LIBOR Con-*
18 *tract.*

19 *(c) No person shall be subject to any claim or cause*
20 *of action in law or equity or request for equitable relief,*
21 *or have liability for damages, arising solely out of the selec-*
22 *tion or use of a Board-Selected Benchmark Replacement or*
23 *the determination, implementation, or performance of*
24 *Benchmark Replacement Conforming Changes, in each case*
25 *by operation of section 4; provided, however, that any per-*

1 son (including a Calculating Person) shall remain subject
2 to any existing legal, regulatory, or contractual obligations
3 to correct servicing or other ministerial errors under or in
4 respect of a LIBOR Contract.

5 (d) The selection or use of a Board-Selected Benchmark
6 Replacement or the determination, implementation, or per-
7 formance of Benchmark Replacement Conforming Changes,
8 in each case by operation of section 4, shall not be deemed
9 to—

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

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

15 (e) Except as provided in either subsections (a), (b),
16 or (c) of section 4, the provisions of this Act shall not be
17 interpreted as creating any negative inference or negative
18 presumption regarding the validity or enforceability of—

19 (1) any Benchmark Replacement (including any
20 method for calculating, determining, or implementing
21 an adjustment to the Benchmark Replacement to ac-
22 count for any historical differences between LIBOR
23 and the Benchmark Replacement) that is not a
24 Board-Selected Benchmark Replacement; or

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

4 **SEC. 6. PREEMPTION.**

5 (a) *This Act and the regulations hereunder shall super-*
 6 *sede any and all laws, statutes, rules, regulations, or stand-*
 7 *ards of any State, the District of Columbia, or any territory*
 8 *or possession of the United States, insofar as they provide*
 9 *for the selection or use of a Benchmark Replacement or re-*
 10 *lated conforming changes.*

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

16 **SEC. 7. TRUST INDENTURE ACT OF 1939.**

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

19 (1) *by striking “and” after “of subsection (a),”*
 20 *in subsection (b); and*

21 (2) *by inserting “, and except that the right of*
 22 *any holder of any indenture security to receive pay-*
 23 *ment of the principal of and interest on such inden-*
 24 *ture security shall not be deemed to be impaired or*
 25 *affected by any change occurring by the application*

1 *of section 4 of the Adjustable Interest Rate (LIBOR)*
 2 *Act of 2021 to any indenture security” after “subject*
 3 *to such lien” in subsection (b).*

4 **SEC. 8. RULEMAKING.**

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

9 **SEC. 9. INTERBANK OFFERED RATE TRANSITION RULE OF**
 10 **CONSTRUCTION.**

11 *None of—*

12 *(1) the selection or use of a Board-Selected*
 13 *Benchmark Replacement as a Benchmark Replace-*
 14 *ment,*

15 *(2) the determination, implementation, or per-*
 16 *formance of Benchmark Replacement Conforming*
 17 *Changes; or*

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

21 *shall be treated as a transfer, disposition, or conversion of*
 22 *property.*

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