AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. ____
OFFERED BY MR. SHERMAN OF CALIFORNIA

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.
2 This Act may be cited as the “Adjustable Interest
3 Rate (LIBOR) Act of 2021”.

4 SEC. 2. FINDINGS AND PURPOSE.
5 (a) FINDINGS.—The Congress finds that—
6 (1) LIBOR is used as a benchmark rate in
7 more than $200 trillion of contracts worldwide;
8 (2) a significant number of existing contracts
9 that reference LIBOR do not provide for the use of
10 a clearly defined or practicable replacement bench-
11 mark rate when LIBOR is discontinued; and
12 (3) the cessation or non-representativeness of
13 LIBOR could result in disruptive litigation related
14 to existing contracts that do not provide for the use
15 of a clearly defined or practicable replacement
16 benchmark rate.
17 (b) PURPOSE.—It is the purpose—
18 (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

(c) Rule of Construction.—Nothing in this Act shall be construed to disfavor the use of any benchmark rate on a prospective basis.

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 calcu-
lating 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 based on LIBOR, whether on a temporary, permanent, or indefinite basis, under or in respect of a LIBOR Contract.

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

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

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

(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 cal-
calculating or determining any valuation, payment, or other measurement based on a Benchmark.

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

(9) “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.

(10) “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.

(11) “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.

(12) “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.

(13) “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.

(14) “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)).

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

(16) “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)—
(1) contains no Fallback Provisions; or
(2) contains Fallback Provisions that identify neither—
(A) a specific Benchmark Replacement;

nor
(B) a Determining Person.
(b) On the LIBOR Replacement Date, the following shall be disregarded as if not included in the Fallback Provisions of any LIBOR Contract and shall be deemed null and void and without any force or effect:
(1) Any requirement for a person (other than a Benchmark Administrator) to conduct a poll, survey, or inquiries for quotes or information concerning interbank lending or deposit rates.
(2) Any reference to LIBOR in a specific Benchmark Replacement if such Benchmark Replacement can be determined without regard to such reference.

(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 Bench-
mark 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), (c), or (e) then all Bench-
mark 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
be required to obtain consent from any other person prior
to the adoption of Benchmark Replacement Conforming
Changes.

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

(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 Replace-
ment 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
(c) 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 that requires creditors to notify borrowers regarding a change-in-terms.

(h) Except as provided in section 5(e), the provisions of this Act shall not alter or impair the rights or obligations of any person, or the authorities of any agency, under Federal consumer financial law (as defined in section 1002(14) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5481(14)).

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 method-
ology 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 fluctua-
tions 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 Re-
placement 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 (in-
cluding, but not limited to, any force majeure or other pro-
vision 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 solely out of the se-
lection or use of a Board-Selected Benchmark Replace-
ment or the determination, implementation, or perform-
ance of Benchmark Replacement Conforming Changes, in
each case by operation of section 4; provided, however,
that any person (including a Calculating Person) shall re-
main subject to any existing legal, regulatory, or contrac-
tual obligations to correct servicing or other ministerial
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 imple-
menting an adjustment to the Benchmark Replace-
ment to account for any historical differences be-
tween LIBOR and the Benchmark Replacement)
that is not a Board-Selected Benchmark Replace-
ment; or

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

SEC. 6. PREEMPTION.

(a) This Act and the regulations hereunder shall su-
persede 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 Re-
placement 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. 7. 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 payment of the principal of and interest on such indenture 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. 8. 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.