

[DISCUSSION DRAFT]

117TH CONGRESS
1ST SESSION

H. R. _____

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

Mr. SHERMAN introduced the following bill; which was referred to the Committee on _____

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
5 Rate (LIBOR) Act of 2021”.

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

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

1 (1) the U.S. dollar LIBOR is used as a bench-
2 mark rate in more than \$200 trillion of contracts
3 worldwide;

4 (2) a significant number of existing contracts
5 that reference the U.S. dollar LIBOR do not provide
6 for the use of a clearly defined fallback benchmark
7 rate if the U.S. dollar LIBOR is discontinued; and

8 (3) the cessation or non-representativeness of
9 the U.S. dollar LIBOR could result in disruptive liti-
10 gation related to existing contracts that do not pro-
11 vide for the use of a clearly defined fallback bench-
12 mark 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 that do not provide for the use of a clearly
17 defined fallback benchmark rate;

18 (2) to preclude litigation related to existing con-
19 tracts that do not provide for the use of a clearly de-
20 fined fallback benchmark rate; and

21 (3) to allow existing contracts that reference
22 LIBOR but provide for the use of a clearly defined
23 fallback benchmark rate to operate according to the
24 terms of such contracts.

1 **SEC. 3. DEFINITIONS.**

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

4 (1) “Benchmark” shall mean an index of inter-
5 est rates or dividend rates that is used, in whole or
6 in part, as the basis of or as a reference for calcu-
7 lating or determining any valuation, payment or
8 other measurement.

9 (2) “Benchmark Replacement” shall mean a
10 Benchmark, or an interest rate or dividend rate
11 (which may or may not be based in whole or in part
12 on a prior setting of LIBOR), to replace LIBOR or
13 any interest rate or dividend rate based on LIBOR,
14 whether on a temporary, permanent, or indefinite
15 basis, under or in respect of a LIBOR Contract.

16 (3) “Benchmark Replacement Conforming
17 Changes” shall mean, with respect to any LIBOR
18 Contract, any technical, administrative, or oper-
19 ational changes, alterations, or modifications that, in
20 the reasonable judgment of a Calculating Person,
21 are necessary to permit the administration and cal-
22 culation of the Board-Selected Benchmark Replace-
23 ment under or in respect of such LIBOR Contract
24 in a manner consistent with standard or rec-
25 ommended market practice and, to the extent prac-
26 ticable, the manner in which such LIBOR Contract

1 was administered immediately prior to the LIBOR
2 Replacement Date.

3 (4) “Board” means the Board of Governors of
4 the Federal Reserve System.

5 (5) “Board-Selected Benchmark Replacement”
6 shall mean a Benchmark Replacement identified by
7 the Board that is based on SOFR. The Board-Selected
8 Benchmark Replacement for each category of
9 LIBOR Contract shall be adjusted to—

10 (A) apply to each LIBOR tenor; and

11 (B) account for the median historical dif-
12 ference between LIBOR and SOFR.

13 (6) “Calculating Person” shall mean, with re-
14 spect to any LIBOR Contract, any person (which
15 may be the Determining Person) responsible for cal-
16 culating or determining any valuation, payment, or
17 other measurement based on a Benchmark.

18 (7) “Determining Person” shall mean, with re-
19 spect to any LIBOR Contract, any person with the
20 authority, right, or obligation to determine the
21 Benchmark Replacement that will take effect on the
22 LIBOR Replacement Date.

23 (8) “Fallback Provisions” shall mean terms in
24 a LIBOR Contract that set forth a methodology or
25 procedure for determining a Benchmark Replace-

1 ment, including any terms relating to the date on
2 which the Benchmark Replacement becomes effec-
3 tive.

4 (9) “LIBOR” shall mean U.S. dollar LIBOR
5 (formerly known as the London interbank offered
6 rate) as administered by ICE Benchmark Adminis-
7 tration Limited (or any predecessor or successor
8 thereof), including any tenor thereof.

9 (10) “LIBOR Contract” shall mean, without
10 limitation, any contract, agreement, mortgage, deed
11 of trust, lease, security (whether representing debt
12 or equity, and including any interest in a corpora-
13 tion, a partnership, or a limited liability company),
14 instrument, or other obligation that uses LIBOR as
15 a Benchmark.

16 (11) “LIBOR Replacement Date” shall mean,
17 unless the Board determines that any LIBOR tenor
18 will cease to be published or cease to be representa-
19 tive on a different date, January 1, 2022 (in the
20 case of the 1-week and 2-month LIBOR tenors) and
21 July 1, 2023 (in the case of the overnight and 1-,
22 3-, 6-, and 12-month LIBOR tenors); provided, how-
23 ever, that a LIBOR Replacement Date for one or
24 more LIBOR tenors shall not constitute a LIBOR

1 Replacement Date with respect to any LIBOR Con-
2 tract that—

3 (A) provides for only one LIBOR tenor, if
4 the terms of such LIBOR Contract require in-
5 terpolation and such tenor can be interpolated
6 from other LIBOR tenors that have a later
7 LIBOR Replacement Date; or

8 (B) permits a party to choose from more
9 than one LIBOR tenor and any such LIBOR
10 tenor—

11 (i) has a later LIBOR Replacement
12 Date; or

13 (ii) can, if the contract requires inter-
14 polation, be interpolated from other
15 LIBOR tenors that have a later LIBOR
16 Replacement Date.

17 (12) “SOFR” shall mean, with respect to any
18 day, the Secured Overnight Financing Rate pub-
19 lished by the Federal Reserve Bank of New York (or
20 a successor administrator).

21 **SEC. 4. LIBOR CONTRACTS.**

22 (a) On the LIBOR Replacement Date, the Board-Se-
23 lected Benchmark Replacement shall, by operation of law,
24 be the Benchmark Replacement for any LIBOR Contract
25 that—

1 (1) contains no Fallback Provisions; or

2 (2) contains Fallback Provisions that result in
3 a Benchmark Replacement that is based in any way
4 on any LIBOR value (except to account for the dif-
5 ference between LIBOR and the Benchmark Re-
6 placement).

7 (b) Following the effective date of this Act, any Fall-
8 back Provisions in a LIBOR Contract that provide for a
9 Benchmark Replacement based on or otherwise involving
10 a poll, survey, or inquiries for quotes or information con-
11 cerning interbank lending rates or any interest rate or div-
12 idend rate based on LIBOR shall be disregarded as if not
13 included in such LIBOR Contract and shall be deemed
14 null and void and without any force or effect.

15 (c) A Determining Person shall have authority under
16 this Act, but shall not be required, to select on or after
17 the effective date of this Act the Board-Selected Bench-
18 mark Replacement as the Benchmark Replacement; pro-
19 vided, however, that a Determining Person shall not have
20 such authority if the LIBOR Contract requires the Deter-
21 mining Person to select another specified Benchmark Re-
22 placement (including, but not limited to, the prime rate
23 or the Effective Federal Funds Rate) that is not based
24 on LIBOR and does not involve a poll, survey, or inquiries

1 for quotes or information concerning interbank lending
2 rates.

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

6 (1) irrevocable;

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

11 (3) used in any determinations based on
12 LIBOR under or in respect of such LIBOR Con-
13 tract occurring on and after the LIBOR Replace-
14 ment Date.

15 (e) If a Board-Selected Benchmark Replacement be-
16 comes the Benchmark Replacement for a LIBOR Contract
17 pursuant to subsection (a) or (c), then all Benchmark Re-
18 placement Conforming Changes shall become an integral
19 part of such LIBOR Contract by operation of law.

20 (f) The provisions of this Act shall not alter or im-
21 pair—

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

24 (2) any LIBOR Contract that contains Fall-
25 back Provisions that would result in a Benchmark

1 Replacement that is not based on LIBOR (including,
2 but not limited to, the prime rate or the Effective
3 Federal Funds Rate), except that such LIBOR Con-
4 tract shall be subject to subsection (b);

5 (3) any LIBOR Contract subject to subsection
6 (c) as to which a Determining Person does not elect
7 to use a Board-Selected Benchmark Replacement
8 pursuant to subsection (c), except that such LIBOR
9 Contract shall be subject to subsection (b);

10 (4) the application to a Board-Selected Bench-
11 mark Replacement of any cap, floor, modifier, or
12 spread adjustment to which LIBOR had been sub-
13 ject pursuant to the terms of a LIBOR Contract;

14 (5) any LIBOR Contract that provides for a
15 special allowance payment to be calculated in accord-
16 ance with a Federal statute that explicitly names
17 LIBOR; or

18 (6) any provision of the Real Estate Settlement
19 Procedures Act or the regulations issued thereunder.

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

21 (a) The selection or use of a Board-Selected Bench-
22 mark Replacement as a Benchmark Replacement under
23 or in respect of a LIBOR Contract by operation of section
24 4 shall constitute—

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

4 (2) a reasonable, comparable, or analogous
5 term for LIBOR;

6 (3) a replacement that is based on a method-
7 ology or information that is similar or comparable to
8 LIBOR; and

9 (4) substantial performance by any person of
10 any right or obligation relating to or based on
11 LIBOR.

12 (b) None of—

13 (1) a LIBOR Replacement Date;

14 (2) the selection or use of a Board-Selected
15 Benchmark Replacement as a Benchmark Replace-
16 ment; or

17 (3) the determination, implementation, or per-
18 formance of Benchmark Replacement Conforming
19 Changes, in each case by operation of section 4,
20 shall—

21 (A) be deemed to impair or affect the right
22 of any person to receive a payment, or affect
23 the amount or timing of such payment, under
24 any LIBOR Contract; or

25 (B) have the effect of—

1 (i) discharging or excusing perform-
2 ance under any LIBOR Contract for any
3 reason, claim, or defense (including, but
4 not limited to, any force majeure or other
5 provision in any LIBOR Contract);

6 (ii) giving any person the right to uni-
7 laterally terminate or suspend performance
8 under any LIBOR Contract;

9 (iii) constituting a breach of any
10 LIBOR Contract; or

11 (iv) voiding or nullifying any LIBOR
12 Contract.

13 (c) No person shall be subject to any claim or cause
14 of action in law or equity or have liability for damages,
15 arising out of or related to the selection or use of a Board-
16 Selected Benchmark Replacement or the determination or
17 performance of Benchmark Replacement Conforming
18 Changes, in each case by operation of section 4.

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

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

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

4 (e) Except as provided in either subsection (a) or (c)
5 of section 4, the provisions of this Act shall not be inter-
6 preted as creating any negative inference or negative pre-
7 sumption regarding the validity or enforceability of—

8 (1) any Benchmark Replacement (including any
9 method for calculating or determining a spread ad-
10 justment) that is not a Board-Selected Benchmark
11 Replacement; or

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

15 **SEC. 6. TAX TREATMENT.**

16 None of—

17 (1) the selection or use of a Board-Selected
18 Benchmark Replacement as a Benchmark Replace-
19 ment;

20 (2) the determination, implementation or per-
21 formance of Benchmark Replacement Conforming
22 Changes; or

23 (3) the application to any LIBOR Contract of,
24 or the agreement by parties thereto to terms con-
25 sistent with, section 4 of this Act, shall be treated

1 as a sale, exchange or other disposition of property
2 for purposes of the Internal Revenue Code of 1986.

3 **SEC. 7. PREEMPTION.**

4 (a) This Act and the regulations hereunder shall su-
5 percede any and all laws of any State, the District of Co-
6 lumbia, or any territory or possession of the United
7 States, insofar as such laws provide for the selection or
8 use of a Benchmark Replacement.

9 (b) No provision of any State or local law that ex-
10 pressly limits the manner of calculating interest, including
11 the compounding of interest, shall apply to the selection
12 or use of a Board-Selected Benchmark Replacement by
13 operation of section 4, and any State or local law to the
14 contrary is hereby preempted.

15 **SEC. 8. TRUST INDENTURE ACT OF 1939.**

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

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

20 (2) by inserting “, and except that the right of
21 any holder of any indenture security to receive pay-
22 ment of the principal of and interest on such inden-
23 ture security shall not be deemed to be impaired or
24 affected by any change occurring by the application
25 of section 4 of the Adjustable Interest Rate

1 (LIBOR) Act of 2021 to any indenture security”
2 after “subject to such lien” in subsection (b).

3 **SEC. 9. RULEMAKING.**

4 The Board is authorized to issue such regulations as
5 may be necessary to enable it to administer and carry out
6 the purposes of this Act; provided, however, that the Sec-
7 retary of the Treasury is authorized to issue such regula-
8 tions as may be necessary to enable it to administer and
9 carry out the purposes of section 6 of this Act.