

[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.

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IN THE HOUSE OF REPRESENTATIVES

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

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

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

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

12       (b) PURPOSE.—It is the purpose—

13           (1) of this Act—

14           (A) to establish a clear and uniform proc-  
15 ess, on a nationwide basis, for replacing LIBOR  
16 in existing contracts the terms of which do not  
17 provide for the use of a clearly defined or prac-  
18 ticable replacement benchmark rate, without af-  
19 fecting the ability of parties to use any appro-  
20 priate benchmark rate in new contracts;

21           (B) to preclude litigation related to exist-  
22 ing contracts the terms of which do not provide  
23 for the use of a clearly defined or practicable  
24 replacement benchmark rate; and

1 (C) to allow existing contracts that ref-  
2 erence LIBOR but provide for the use of a  
3 clearly defined fallback and practicable replace-  
4 ment rate, to operate according to their terms;  
5 and

6 [(2) of section 6 to provide that modifications  
7 of existing contracts pursuant to this chapter do not  
8 result in recognition of gain or loss for Federal in-  
9 come tax purposes and to provide authority to the  
10 Secretary of the Treasury to provide clear guidance  
11 regarding the Federal income tax consequences of  
12 transitioning contracts that reference IBORs to re-  
13 placement benchmark rates.]

14 **SEC. 3. DEFINITIONS.**

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

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

22 (2) “Benchmark Administrator” means a per-  
23 son that publishes a Benchmark for use by third  
24 parties.

1           (3) “Benchmark Replacement” shall mean a  
2           Benchmark, or an interest rate or dividend rate  
3           (which may or may not be based in whole or in part  
4           on a prior setting of LIBOR), to replace LIBOR or  
5           any interest rate or dividend rate in LIBOR, wheth-  
6           er on a temporary, permanent, or indefinite basis,  
7           under or in respect of a LIBOR Contract.

8           (4) “Benchmark Replacement Conforming  
9           Changes” shall mean, with respect to any LIBOR  
10          Contract, any documented technical, administrative,  
11          or operational changes, alterations, or modifications  
12          that, in the reasonable judgment of a Calculating  
13          Person, are necessary or appropriate to permit the  
14          administration and calculation of the Board-Selected  
15          Benchmark Replacement under or in respect of such  
16          LIBOR Contract in a manner consistent with rel-  
17          evant market practice or recommendations for simi-  
18          lar types of LIBOR Contracts and, to the extent  
19          practicable, the manner in which such LIBOR Con-  
20          tract was administered immediately prior to the  
21          LIBOR Replacement Date.

22          (5) “Board” means the Board of Governors of  
23          the 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  
6           LIBOR 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 Board-

10          Selected Benchmark Replacement shall initially  
11          reflect the spread between the Board-Selected  
12          Benchmark Replacement and LIBOR imme-  
13          diately 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 cal-  
19          culating or determining any valuation, payment, or  
20          other measurement based on a Benchmark.

21          (8) “Determining Person” shall mean, with re-  
22          spect to any LIBOR Contract, any person with the  
23          authority, right, or obligation, including on a tem-  
24          porary basis, (as identified by the provisions of the  
25          LIBOR Contract, or as identified by the governing

1 law of the LIBOR Contract, as appropriate) to de-  
2 termine a Benchmark Replacement.

3 (9) “Fallback Provisions” shall mean terms in  
4 a LIBOR Contract for determining a Benchmark  
5 Replacement, including any terms relating to the  
6 date on which the Benchmark Replacement becomes  
7 effective.

8 (10) “LIBOR” shall mean the overnight and 1-  
9 , 3-, 6-, and 12-month tenors of U.S. dollar LIBOR  
10 (formerly known as the London interbank offered  
11 rate) as administered by ICE Benchmark Adminis-  
12 tration Limited (or any predecessor or successor  
13 thereof). LIBOR shall not include the 1-week or 2-  
14 month tenors of U.S. dollar LIBOR.

15 (11) “LIBOR Contract” shall mean, without  
16 limitation, any contract, agreement, indenture, orga-  
17 nizational documents, guarantee, mortgage, deed of  
18 trust, lease, Security (whether representing debt or  
19 equity, and including any interest in a corporation,  
20 a partnership, or a limited liability company), instru-  
21 ment, or other obligation or asset that, by its terms,  
22 continues in any way to use LIBOR as a Bench-  
23 mark as of the applicable LIBOR Replacement  
24 Date.

1           (12) “LIBOR Replacement Date” shall mean  
2           the first London banking day after June 30, 2023,  
3           unless the Board determines that any LIBOR tenor  
4           will cease to be published or cease to be representa-  
5           tive on a different date.

6           (13) “Security” shall have the meaning as-  
7           signed to such term in section 2(a) of the Securities  
8           Act of 1933 (15 U.S.C. 77b(a)).

9           (14) “SOFR” shall mean the Secured Over-  
10          night Financing Rate published by the Federal Re-  
11          serve Bank of New York (or a successor adminis-  
12          trator).

13          【(15) “Tax-Relevant IBOR” shall mean  
14          LIBOR, any tenor of non-U.S. dollar currency rates  
15          formerly known as the London interbank offered  
16          rate as administered by ICE Benchmark Adminis-  
17          tration Limited (or any predecessor or successor ad-  
18          ministrator thereof), and any other interbank offered  
19          rates that are expected to cease.】

20          【(16) “Tax-Relevant IBOR Contract” shall  
21          mean, without limitation, any contract, agreement,  
22          mortgage, deed of trust, lease, Security (whether  
23          representing debt or equity, and including any inter-  
24          est in a corporation, a partnership, or a limited li-

1 ability company), instrument or other obligation that  
2 uses an IBOR as a Benchmark.】

3 (17) “Tenor Spread Adjustment” shall mean—

4 (A) 0.00644 percent for overnight LIBOR;

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

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

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

8 and

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

10 **SEC. 4. LIBOR CONTRACTS.**

11 (a) On the LIBOR Replacement Date, the Board-  
12 lected Benchmark Replacement shall, by operation of law,  
13 be the Benchmark Replacement for any LIBOR Contract  
14 that, after giving any effect to subsection (b), contains no  
15 Fallback Provisions.

16 (b) On the LIBOR Replacement Date, any Fallback  
17 Provisions in a LIBOR Contract that provide for a Bench-  
18 mark Replacement that is based in any way on any  
19 LIBOR value or require a person (other than a Bench-  
20 mark Administrator) to conduct a poll, survey, or inquiries  
21 for quotes or information concerning interbank lending or  
22 deposit rates shall be disregarded as if not included in  
23 such LIBOR Contract and shall be deemed null and void  
24 and without any force or effect.

1 (c) Subject to subsection (g)(2), a Determining Per-  
2 son shall have authority under this Act, but shall not be  
3 required, to select the Board-Selected Benchmark Re-  
4 placement as the Benchmark Replacement.

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

8 (1) irrevocable;

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

13 (3) used in any determinations of the Bench-  
14 mark under or in respect of such LIBOR Contract  
15 occurring on and after the LIBOR Replacement  
16 Date.

17 (e) If a Determining Person has authority to select  
18 the Board-Selected Benchmark Replacement under sub-  
19 section (c) but does not select a Benchmark Replacement  
20 by the date specified in subsection (d)(2), then, on the  
21 LIBOR Replacement Date, the Board-Selected Bench-  
22 mark Replacement shall, by operation of law, be the  
23 Benchmark Replacement for the LIBOR Contract.

24 (f) If the Board-Selected Benchmark Replacement  
25 becomes the Benchmark Replacement for a LIBOR Con-

1 tract pursuant to subsection (a), (c), or (e) then all Bench-  
2 mark Replacement Conforming Changes shall become an  
3 integral part of such LIBOR Contract by operation of law.  
4 For the avoidance of doubt, a Calculating Person shall  
5 not, unless explicitly required under the terms of the  
6 LIBOR Contract, be required to obtain consent from, or  
7 give advance notice to, any other person prior to the adop-  
8 tion of Benchmark Replacement Conforming Changes.

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

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

13 (2) any LIBOR Contract that contains Fall-  
14 back Provisions that identify a Benchmark Replace-  
15 ment that is not based in any way on any LIBOR  
16 value (including, but not limited to, the prime rate  
17 or the Effective Federal Funds Rate), except that  
18 such LIBOR Contract shall be subject to subsection  
19 (b);

20 (3) any LIBOR Contract subject to subsection  
21 (c) as to which a Determining Person does not elect  
22 to use a Board-Selected Benchmark Replacement  
23 pursuant to subsection (c), except to the extent that  
24 such LIBOR Contract is subject to subsection (b) or  
25 (e);

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

5 (5) any provisions of Federal consumer finan-  
6 cial law as defined in section 1002 of the Dodd-  
7 Frank Wall Street Reform and Consumer Protection  
8 Act (12 U.S.C. 5481), and any Benchmark Replace-  
9 ment and the transition to it must be in accordance  
10 with such law.

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

12 (a) A Board-Selected Benchmark Replacement and  
13 the selection or use of a Board-Selected Benchmark Re-  
14 placement as a Benchmark Replacement under or in re-  
15 spect of a LIBOR Contract, as well as any Benchmark  
16 Replacement Conforming Changes, by operation of section  
17 4 shall constitute—

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

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

23 (3) a replacement that is based on a method-  
24 ology or information that is similar or comparable to  
25 LIBOR;

1           (4) substantial performance by any person of  
2           any right or obligation relating to or based on  
3           LIBOR; and

4           (5) a replacement that has historical fluctua-  
5           tions that are substantially similar to those of  
6           LIBOR for purposes of the Truth in Lending Act  
7           and its implementing regulations.

8           (b) Neither of (1) the selection or use of a Board-  
9           Selected Benchmark Replacement as a Benchmark Re-  
10          placement or (2) the determination, implementation, or  
11          performance of Benchmark Replacement Conforming  
12          Changes, in each case by operation of section 4, shall (A)  
13          be deemed to impair or affect the right of any person to  
14          receive a payment, or to affect the amount or timing of  
15          such payment, under any LIBOR Contract or (B) have  
16          the effect of (i) discharging or excusing performance under  
17          any LIBOR Contract for any reason, claim, or defense (in-  
18          cluding, but not limited to, any force majeure or other pro-  
19          vision in any LIBOR Contract), (ii) giving any person the  
20          right to unilaterally terminate or suspend performance  
21          under any LIBOR Contract, (iii) constituting a breach of  
22          any LIBOR Contract, or (iv) voiding or nullifying any  
23          LIBOR Contract.

24          (c) No person shall be subject to any claim or cause  
25          of action in law or equity or request for equitable relief,

1 or have liability for damages, arising out of or related to  
2 the selection or use of a Board-Selected Benchmark Re-  
3 placement or the determination, implementation, or per-  
4 formance of Benchmark Replacement Conforming  
5 Changes, in each case by operation of section 4; provided,  
6 however, that any person (including a Calculating Person)  
7 shall remain subject to any existing [legal, regulatory, or  
8 contractual] obligations to correct servicing or other min-  
9 isterial errors under or in respect of a LIBOR Contract.

10 (d) The selection or use of a Board-Selected Bench-  
11 mark Replacement or the determination, implementation,  
12 or performance of Benchmark Replacement Conforming  
13 Changes, in each case by operation of section 4, shall not  
14 be deemed to—

15 (1) be an amendment or modification of any  
16 LIBOR Contract; or

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

20 (e) Except as provided in either subsections (a), (b),  
21 or (c) of section 4, the provisions of this Act shall not  
22 be interpreted as creating any negative inference or nega-  
23 tive presumption regarding the validity or enforceability  
24 of—

1 (1) any Benchmark Replacement (including any  
2 method for calculating, determining, or imple-  
3 menting an adjustment to the Benchmark Replace-  
4 ment to account for any historical differences be-  
5 tween LIBOR and the Benchmark Replacement)  
6 that is not a Board-Selected Benchmark Replace-  
7 ment; or

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

11 **[SEC. 6. TAX TREATMENT AND TAX REGULATIONS FOR**  
12 **IBOR TRANSITION.**

13 **[(a) None of—]**

14 **[(1) the selection or use of a Board-Selected**  
15 **Benchmark Replacement as a Benchmark Replace-**  
16 **ment,]**

17 **[(2) the determination, implementation or per-**  
18 **formance of Benchmark Replacement Conforming**  
19 **Changes, or]**

20 **[(3) the application to any LIBOR Contract of,**  
21 **or the agreement by parties thereto to terms con-**  
22 **sistent with, section 4,]**

23 shall be treated as a sale, exchange, or other disposition  
24 of property for purposes of section 1001 of the Internal  
25 Revenue Code of 1986.

1           **[(b) Not later than 180 days after the date of enact-**  
2 **ment of this Act, the Secretary of the Treasury shall issue**  
3 **such regulations as may be necessary or appropriate to**  
4 **carry out subsection (a) and address the Federal income**  
5 **tax consequences of transitioning a Tax-Relevant IBOR**  
6 **Contract to a replacement benchmark rate. Such regula-**  
7 **tions shall [prioritize a smooth transition from the use**  
8 **of a Tax-Relevant IBOR]/[balance the need for a smooth**  
9 **transition from the use of a Tax-Relevant IBOR with the**  
10 **prevention of inappropriate tax planning].]**

11 **SEC. 7. PREEMPTION.**

12           (a) This Act and the regulations hereunder shall su-  
13 percede any and all laws, statutes, rules, regulations, or  
14 standards of any State, the District of Columbia, or any  
15 territory or possession of the United States, insofar as  
16 they provide for the selection or use of a Benchmark Re-  
17 placement or related conforming changes.

18           (b) No provision of State or local law that expressly  
19 limits the manner of calculating interest, including the  
20 compounding of interest, shall apply to the selection or  
21 use of a Board-Selected Benchmark Replacement or  
22 Benchmark Replacement Conforming Changes.

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

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

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

3 (2) by inserting “, and except that the right of  
4 any holder of any indenture security to receive pay-  
5 ment of the principal of and interest on such inden-  
6 ture security shall not be deemed to be impaired or  
7 affected by any change occurring by the application  
8 of section 4 of the Adjustable Interest Rate  
9 (LIBOR) Act of 2021 to any indenture security”  
10 after “subject to such lien” in subsection (b).

11 **SEC. 9. SPECIAL ALLOWANCE PAYMENTS FOR LEGACY FED-**  
12 **ERAL STUDENT LOANS.**

13 Section 438(b)(2)(I) of the Higher Education Act (20  
14 U.S.C. 1087-1(b)(2)(I)) is amended by striking “of the  
15 1-month London Inter Bank Offered Rate (LIBOR) for  
16 United States dollars in effect for each of the days in such  
17 quarter as compiled and released by the British Bankers  
18 Association” and inserting “of 1-month LIBOR for  
19 United States dollars in effect for each of the days in such  
20 quarter as administered by ICE Benchmark Administra-  
21 tion Limited (or any successor) or (as determined by the  
22 Secretary) any replacement benchmark rate for contracts  
23 established by the Board of Governors of the Federal Re-  
24 serve System under the Adjustable Interest Rate (LIBOR)  
25 Act of 2021.”.

**1 SEC. 10. RULEMAKING.**

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