

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—

1 (A) to establish a clear and uniform proc-
2 ess, on a nationwide basis, for replacing LIBOR
3 in existing contracts the terms of which do not
4 provide for the use of a clearly defined or prac-
5 ticable replacement benchmark rate, without af-
6 fecting the ability of parties to use any appro-
7 priate benchmark rate in new contracts;

8 (B) to preclude litigation related to exist-
9 ing contracts the terms of which do not provide
10 for the use of a clearly defined or practicable
11 replacement benchmark rate; and

12 (C) to allow existing contracts that ref-
13 erence LIBOR but provide for the use of a
14 clearly defined fallback and practicable replace-
15 ment rate, to operate according to their terms;
16 and

17 (e) **RULE OF CONSTRUCTION.**—Nothing in this Act
18 shall be construed to disfavor the use of any benchmark
19 rate on a prospective basis.

20 **SEC. 3. DEFINITIONS.**

21 As used in this Act, the following terms shall have
22 the following meanings:

23 (1) “Benchmark” shall mean an index of inter-
24 est rates or dividend rates that is used, in whole or
25 in part, as the basis of or as a reference for calcu-

1 lating or determining any valuation, payment or
2 other measurement.

3 (2) “Benchmark Administrator” means a per-
4 son that publishes a Benchmark for use by third
5 parties.

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

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

17 (A) the Board establishes for the purpose
18 of facilitating the implementation, administra-
19 tion, and calculation of the Board-Selected
20 Benchmark Replacement; or

21 (B) in the reasonable judgment of a Calcu-
22 lating Person, are otherwise necessary or appro-
23 priate to permit the implementation, adminis-
24 tration, and calculation of the Board-Selected
25 Benchmark Replacement under or in respect of

1 a LIBOR Contract after giving due consider-
2 ation to any Benchmark Replacement Con-
3 forming Changes under subparagraph (A).

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

6 (6)(A) “Board-Selected Benchmark Replace-
7 ment” shall mean a Benchmark Replacement identi-
8 fied by the Board that is based on SOFR.

9 (B) The Board shall adjust the Board-Selected
10 Benchmark Replacement for each category of
11 LIBOR Contract that the Board may identify to—

12 (i) apply to each LIBOR tenor; and

13 (ii) incorporate the relevant Tenor Spread
14 Adjustment.(C) For Consumer Loans, the
15 Board-Selected Benchmark Replacement shall
16 initially reflect the spread between the Board-
17 Selected Benchmark Replacement and LIBOR
18 immediately before the LIBOR Replacement
19 Date and shall incorporate the relevant Tenor
20 Spread Adjustment over a one-year transition
21 period.

22 (7) “Calculating Person” shall mean, with re-
23 spect to any LIBOR Contract, any person (which
24 may be the Determining Person) responsible for cal-

1 culating or determining any valuation, payment, or
2 other measurement based on a Benchmark.

3 (8) “Consumer Loan” shall mean a consumer
4 credit transaction. For purposes of this paragraph,
5 the terms “consumer” and “credit” have the mean-
6 ing given those terms, respectively, under section
7 103 of the Truth in Lending Act (15 U.S.C. 1602).

8 (9) “Determining Person” shall mean, with re-
9 spect to any LIBOR Contract, any person with the
10 authority, right, or obligation, including on a tem-
11 porary basis, (as identified by the provisions of the
12 LIBOR Contract, or as identified by the governing
13 law of the LIBOR Contract, as appropriate) to de-
14 termine a Benchmark Replacement.

15 (10) “Fallback Provisions” shall mean terms in
16 a LIBOR Contract for determining a Benchmark
17 Replacement, including any terms relating to the
18 date on which the Benchmark Replacement becomes
19 effective.

20 (11) “LIBOR” shall mean the overnight and 1-
21 , 3-, 6-, and 12-month tenors of U.S. dollar LIBOR
22 (formerly known as the London interbank offered
23 rate) as administered by ICE Benchmark Adminis-
24 tration Limited (or any predecessor or successor

1 thereof). LIBOR shall not include the 1-week or 2-
2 month tenors of U.S. dollar LIBOR.

3 (12) “LIBOR Contract” shall mean, without
4 limitation, any contract, agreement, indenture, orga-
5 nizational documents, guarantee, mortgage, deed of
6 trust, lease, Security (whether representing debt or
7 equity, and including any interest in a corporation,
8 a partnership, or a limited liability company), instru-
9 ment, or other obligation or asset that, by its terms,
10 continues in any way to use LIBOR as a Bench-
11 mark as of the applicable LIBOR Replacement
12 Date.

13 (13) “LIBOR Replacement Date” shall mean
14 the first London banking day after June 30, 2023,
15 unless the Board determines that any LIBOR tenor
16 will cease to be published or cease to be representa-
17 tive on a different date.

18 (14) “Security” shall have the meaning as-
19 signed to such term in section 2(a) of the Securities
20 Act of 1933 (15 U.S.C. 77b(a)).

21 (15) “SOFR” shall mean the Secured Over-
22 night Financing Rate published by the Federal Re-
23 serve Bank of New York (or a successor adminis-
24 trator).

25 (16) “Tenor Spread Adjustment” shall mean—

- 1 (A) 0.00644 percent for overnight LIBOR;
2 (B) 0.11448 percent for 1-month LIBOR;
3 (C) 0.26161 percent for 3-month LIBOR;
4 (D) 0.42826 percent for 6-month LIBOR;
5 and
6 (E) 0.71513 percent for 12-month LIBOR.

7 **SEC. 4. LIBOR CONTRACTS.**

8 (a) On the LIBOR Replacement Date, the Board-Se-
9 lected Benchmark Replacement shall, by operation of law,
10 be the Benchmark Replacement for any LIBOR Contract
11 that, after giving any effect to subsection (b)—

- 12 (1) contains no Fallback Provisions; or
13 (2) contains Fallback Provisions that identify
14 neither—
15 (A) a specific Benchmark Replacement;
16 nor
17 (B) a Determining Person.

18 (b) On the LIBOR Replacement Date, the following
19 shall be disregarded as if not included in the Fallback Pro-
20 visions of any LIBOR Contract and shall be deemed null
21 and void and without any force or effect:

- 22 (1) Any requirement for a person (other than a
23 Benchmark Administrator) to conduct a poll, survey,
24 or inquiries for quotes or information concerning
25 interbank lending or deposit rates.

1 (2) Any reference to LIBOR in a specific
2 Benchmark Replacement if such Benchmark Re-
3 placement can be determined without regard to such
4 reference.

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

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

12 (1) irrevocable;

13 (2) made by the earlier of the LIBOR Replace-
14 ment Date and the latest date for selecting a Bench-
15 mark Replacement according to the terms of such
16 LIBOR Contract; and

17 (3) used in any determinations of the Bench-
18 mark under or in respect of such LIBOR Contract
19 occurring on and after the LIBOR Replacement
20 Date.

21 (e) If a Determining Person has authority to select
22 the Board-Selected Benchmark Replacement under sub-
23 section (c) but does not select a Benchmark Replacement
24 by the date specified in subsection (d)(2), then, on the
25 LIBOR Replacement Date, the Board-Selected Bench-

1 mark Replacement shall, by operation of law, be the
2 Benchmark Replacement for the LIBOR Contract.

3 (f) If the Board-Selected Benchmark Replacement
4 becomes the Benchmark Replacement for a LIBOR Con-
5 tract pursuant to subsection (a), (c), or (e) then all Bench-
6 mark Replacement Conforming Changes shall become an
7 integral part of such LIBOR Contract by operation of law.
8 For the avoidance of doubt, a Calculating Person shall not
9 be required to obtain consent from any other person prior
10 to the adoption of Benchmark Replacement Conforming
11 Changes.

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

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

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

23 (3) any LIBOR Contract subject to subsection
24 (c) as to which a Determining Person does not elect
25 to use a Board-Selected Benchmark Replacement

1 pursuant to subsection (c), except to the extent that
2 such LIBOR Contract is subject to subsection (b) or
3 (e);

4 (4) the application to a Board-Selected Bench-
5 mark Replacement of any cap, floor, modifier, or
6 spread adjustment to which LIBOR had been sub-
7 ject pursuant to the terms of a LIBOR Contract; or
8 (5) any provisions of Federal consumer finan-
9 cial law that requires creditors to notify borrowers
10 regarding a change-in-terms.

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

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

18 (a) A Board-Selected Benchmark Replacement and
19 the selection or use of a Board-Selected Benchmark Re-
20 placement as a Benchmark Replacement under or in re-
21 spect of a LIBOR Contract, as well as any Benchmark
22 Replacement Conforming Changes, by operation of section
23 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 rate,
5 index, or 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;

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

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

16 (b) Neither of (1) the selection or use of a Board-
17 Selected Benchmark Replacement as a Benchmark Re-
18 placement or (2) the determination, implementation, or
19 performance of Benchmark Replacement Conforming
20 Changes, in each case by operation of section 4, shall (A)
21 be deemed to impair or affect the right of any person to
22 receive a payment, or to affect the amount or timing of
23 such payment, under any LIBOR Contract or (B) have
24 the effect of (i) discharging or excusing performance under
25 any LIBOR Contract for any reason, claim, or defense (in-

1 cluding, but not limited to, any force majeure or other pro-
2 vision in any LIBOR Contract), (ii) giving any person the
3 right to unilaterally terminate or suspend performance
4 under any LIBOR Contract, (iii) constituting a breach of
5 any LIBOR Contract, or (iv) voiding or nullifying any
6 LIBOR Contract.

7 (c) No person shall be subject to any claim or cause
8 of action in law or equity or request for equitable relief,
9 or have liability for damages, arising solely out of the se-
10 lection or use of a Board-Selected Benchmark Replace-
11 ment or the determination, implementation, or perform-
12 ance of Benchmark Replacement Conforming Changes, in
13 each case by operation of section 4; provided, however,
14 that any person (including a Calculating Person) shall re-
15 main subject to any existing legal, regulatory, or contrac-
16 tual obligations to correct servicing or other ministerial
17 errors under or in respect of a LIBOR Contract.

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

23 (1) be an amendment or modification of any
24 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 subsections (a), (b),
5 or (c) of section 4, the provisions of this Act shall not
6 be interpreted as creating any negative inference or nega-
7 tive presumption regarding the validity or enforceability
8 of—

9 (1) any Benchmark Replacement (including any
10 method for calculating, determining, or imple-
11 menting an adjustment to the Benchmark Replace-
12 ment to account for any historical differences be-
13 tween LIBOR and the Benchmark Replacement)
14 that is not a Board-Selected Benchmark Replace-
15 ment; or

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

19 **SEC. 6. PREEMPTION.**

20 (a) This Act and the regulations hereunder shall su-
21 persede any and all laws, statutes, rules, regulations, or
22 standards of any State, the District of Columbia, or any
23 territory or possession of the United States, insofar as
24 they provide for the selection or use of a Benchmark Re-
25 placement or related conforming changes.

1 (b) No provision of State or local law that expressly
2 limits the manner of calculating interest, including the
3 compounding of interest, shall apply to the selection or
4 use of a Board-Selected Benchmark Replacement or
5 Benchmark Replacement Conforming Changes.

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

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

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

11 (2) by inserting “, and except that the right of
12 any holder of any indenture security to receive pay-
13 ment of the principal of and interest on such inden-
14 ture security shall not be deemed to be impaired or
15 affected by any change occurring by the application
16 of section 4 of the Adjustable Interest Rate
17 (LIBOR) Act of 2021 to any indenture security”
18 after “subject to such lien” in subsection (b).

19 **SEC. 8. RULEMAKING.**

20 Not later than 180 days after the date of enactment
21 of this Act, the Board shall issue such regulations as may
22 be necessary or appropriate to enable it to administer and
23 carry out the purposes of this Act.

