Suspend the Rules and Pass the Bill, H.R. 4616, with an amendment
(The amendment strikes all after the enacting clause and inserts a new text)

117th Congress
1st Session

H. R. 4616

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.

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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Adjustable Interest Rate (LIBOR) Act of 2021”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

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

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

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

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

(1) 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;

(2) 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
(3) 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.

(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 calculating 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 determines, in its discretion, would address one or more issues affecting the implementation, administration, and calculation of the Board-Selected Benchmark Replacement in LIBOR contracts; or

(B) solely with respect to a LIBOR Contract that is not a Consumer Loan, 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 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 Bench-
mark 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, any references
in the Fallback Provisions of a LIBOR Contract to—

(1) a Benchmark Replacement that is based in
any way on any LIBOR value, except to account for
the difference between LIBOR and the Benchmark
Replacement, or

(2) a requirement that a person (other than a
Benchmark Administrator) conduct a poll, survey, or
inquiries for quotes or information concerning inter-
bank lending or deposit rates,
shall be disregarded as if not included in the Fallback Pro-
visions of such LIBOR Contract and shall be deemed null
and void and without any force or effect.

(c) Subject to subsection (g)(2), a Determining Per-
son shall have authority under this Act, but shall not be
required, to select the Board-Selected Benchmark Re-
placement 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 Benchmark 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 Contract pursuant to subsection (a), (c), or (e) then all Benchmark 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
(e) 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 Bench-
mark Replacement of any cap, floor, modifier, or
spread adjustment to which LIBOR had been sub-
ject pursuant to the terms of a LIBOR Contract; or
(5) any provisions of Federal consumer financial law that require creditors to notify borrowers regarding a change-in-terms or that govern the re-evaluation of rate increases on credit card accounts under open-end (not home-secured) consumer credit plans.

(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 methodology 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 fluctuations 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 Replacement 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 (including, but not limited to, any force majeure or other provision 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 out of—

(1) the selection or use of a Board-Selected Benchmark Replacement,

(2) the implementation of Benchmark Replacement Conforming Changes, or

(3) with respect to a LIBOR Contract that is not a Consumer Loan, the determination of Benchmark Replacement Conforming Changes,

in each case after giving effect to the provisions of section 4; provided, however, that in each case any person (including a Calculating Person) shall remain subject to the terms of a LIBOR Contract that are not affected by this Act and any existing legal, regulatory, or contractual 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 Benchmark 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 for the purpose of the governing law of such 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 (e) of section 4, the provisions of this Act shall not be interpreted as creating any negative inference or negative presumption regarding the validity or enforceability of—

(1) any Benchmark Replacement (including any method for calculating, determining, or implementing an adjustment to the Benchmark Replacement to account for any historical differences between LIBOR and the Benchmark Replacement) that is not a Board-Selected Benchmark Replacement; 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 supersede 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 Replacement 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.

SEC. 9. REVISED CALCULATION RULE TO ADDRESS INSTANCES WHERE 1-MONTH USD LIBOR CEASES OR IS NON-REPRESENTATIVE.

Section 438(b)(2)(I) of the Higher Education Act of 1965 (20 U.S.C. 1087–1(b)(2)(I)) is amended by adding at the end the following:

“(viii) REVISED CALCULATION RULE TO ADDRESS INSTANCES WHERE 1-MONTH USD LIBOR CEASES OR IS NON-REPRESENTATIVE.—

“(I) SUBSTITUTE REFERENCE INDEX.—The provisions of this clause apply to loans for which the special allowance payment would otherwise be calculated pursuant to clause (vii).

“(II) CALCULATION BASED ON SOFR.—For loans described in subsection (III) or (IV), the special allowance payment described in this subsection shall be substituted for the payment provided under clause (vii).

For each calendar quarter, the formula for computing the special allow-
ance that would otherwise apply under clause (vii) shall be revised by substituting ‘of the quotes of the 30-day Average Secured Overnight Financing Rate (SOFR) in effect for each of the days in such quarter as published by the Federal Reserve Bank of New York (or a successor administrator), adjusted daily by adding the Tenor Spread Adjustment, as that term is defined in the Adjustable Interest Rate (LIBOR) Act of 2021, for 1-month LIBOR contracts of 0.11448 percent’ for ‘of the 1-month London Inter Bank Offered Rate (LIBOR) for United States dollars in effect for each of the days in such quarter as compiled and released by the British Bankers Association’. The special allowance calculation for loans subject to clause (vii) shall otherwise remain in effect.

“(III) LOANS ELIGIBLE FOR SOFR-BASED CALCULATION.—Except as provided in subclause (IV), the spe-
cial allowance payment calculated under subclause (II) shall apply to all loans for which the holder (or, if the holder acts as an eligible lender trustee for the beneficial owner of the loan, the beneficial owner of the loan) at any time after the effective date of this clause notifies the Secretary that the holder or beneficial owner affirmatively and permanently elects to waive all contractual, statutory, or other legal rights to a special allowance paid under clause (vii) or to the special allowance paid pursuant to any other formula that was previously in effect with respect to such loan, and accepts the rate described in subclause (II).

Any such waiver shall apply to all loans then held, or to be held from time to time, by such holder or beneficial owner; provided that, due to the need to obtain the approval of one of the following, demonstrated to the satisfaction of the Secretary—
“(aa) one or more third parties with a legal or beneficial interest in loans eligible for the SOFR-based calculation, or

“(bb) a nationally recognized rating organization assigning a rating to a financing secured by loans otherwise eligible for the SOFR-based calculation,

the holder of the loan (or, if the holder acts as an eligible lender trustee for the beneficial owner of the loan, the beneficial owner of the loan) may elect to apply the rate described in subclause (II) to specified loan portfolios established for financing purposes by separate notices with different effective dates. The special allowance rate based on SOFR shall be effective with respect to a portfolio as of the first day of the calendar quarter following the applicable effective date of the waiver received by the Secretary from the holder or beneficial owner and shall permanently and ir-
revocably continue for all subsequent quarters.

“(IV) Fallback provisions.—

“(aa) In the event that a holder or beneficial owner has not elected to waive its rights to a special allowance payment under clause (vii) with respect to a portfolio with an effective date of the waiver prior to the first of—

“(AA) the date on which the ICE Benchmark Administration (‘IBA’) has permanently or indefinitely stopped providing the 1-month United States Dollar LIBOR (‘1-month USD LIBOR’) to the general public,

“(BB) the effective date of an official public statement by the IBA or its regulator that the 1-month USD LIBOR is no longer
reliable or no longer representative, or

“(CC) the LIBOR Replacement Date, as that term is defined in section 3 of the Adjustable Interest Rate (LIBOR) Act of 2021, the special allowance rate calculation as described in subclause (II) shall, by operation of law, apply to all loans in such portfolio.

“(bb) In such event—

“(AA) the last determined rate of special allowance based on 1-month USD LIBOR will continue to apply until the end of the then current calendar quarter; and

“(BB) the special allowance rate calculation as described in subclause (II) shall become effective as of the first day of the following
calendar quarter and remain in effect for all subsequent calendar quarters.”.