

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 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”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

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

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

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

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

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

15 (1) to establish a clear and uniform process, on
16 a nationwide basis, for replacing LIBOR in existing
17 contracts the terms of which do not provide for the
18 use of a clearly defined or practicable replacement
19 benchmark rate, without affecting the ability of par-
20 ties to use any appropriate benchmark rate in new
21 contracts;

22 (2) to preclude litigation related to existing con-
23 tracts the terms of which do not provide for the use
24 of a clearly defined or practicable replacement
25 benchmark rate; and

1 (3) to allow existing contracts that reference
2 LIBOR but provide for the use of a clearly defined
3 fallback and practicable replacement rate, to operate
4 according to their terms.

5 (c) **RULE OF CONSTRUCTION.**—Nothing in this Act
6 shall be construed to disfavor the use of any benchmark
7 rate on a prospective basis.

8 **SEC. 3. DEFINITIONS.**

9 As used in this Act, the following terms shall have
10 the following meanings:

11 (1) “Benchmark” shall mean an index of inter-
12 est rates or dividend rates that is used, in whole or
13 in part, as the basis of or as a reference for calcu-
14 lating or determining any valuation, payment or
15 other measurement.

16 (2) “Benchmark Administrator” means a per-
17 son that publishes a Benchmark for use by third
18 parties.

19 (3) “Benchmark Replacement” shall mean a
20 Benchmark, or an interest rate or dividend rate
21 (which may or may not be based in whole or in part
22 on a prior setting of LIBOR), to replace LIBOR or
23 any interest rate or dividend rate based on LIBOR,
24 whether on a temporary, permanent, or indefinite
25 basis, under or in respect of a LIBOR Contract.

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

5 (A) the Board determines, in its discretion,
6 would address one or more issues affecting the
7 implementation, administration, and calculation
8 of the Board-Selected Benchmark Replacement
9 in LIBOR contracts; or

10 (B) solely with respect to a LIBOR Con-
11 tract that is not a Consumer Loan, in the rea-
12 sonable judgment of a Calculating Person, are
13 otherwise necessary or appropriate to permit
14 the implementation, administration, and cal-
15 culation of the Board-Selected Benchmark Re-
16 placement under or in respect of a LIBOR Con-
17 tract after giving due consideration to any
18 Benchmark Replacement Conforming Changes
19 under subparagraph (A).

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

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

1 (B) The Board shall adjust the Board-Selected
2 Benchmark Replacement for each category of
3 LIBOR Contract that the Board may identify to—

4 (i) apply to each LIBOR tenor; and

5 (ii) incorporate the relevant Tenor Spread
6 Adjustment.

7 (C) For Consumer Loans, the Board-Selected
8 Benchmark Replacement shall initially reflect the
9 spread between the Board-Selected Benchmark Re-
10 placement and LIBOR immediately before the
11 LIBOR Replacement Date and shall incorporate the
12 relevant Tenor Spread Adjustment over a one-year
13 transition period.

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

19 (8) “Consumer Loan” shall mean a consumer
20 credit transaction. For purposes of this paragraph,
21 the terms “consumer” and “credit” have the mean-
22 ing given those terms, respectively, under section
23 103 of the Truth in Lending Act (15 U.S.C. 1602).

24 (9) “Determining Person” shall mean, with re-
25 spect to any LIBOR Contract, any person with the

1 authority, right, or obligation, including on a tem-
2 porary basis, (as identified by the provisions of the
3 LIBOR Contract, or as identified by the governing
4 law of the LIBOR Contract, as appropriate) to de-
5 termine a Benchmark Replacement.

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

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

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

1 mark as of the applicable LIBOR Replacement
2 Date.

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

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

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

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

16 (A) 0.00644 percent for overnight LIBOR;

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

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

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

20 and

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

22 **SEC. 4. LIBOR CONTRACTS.**

23 (a) On the LIBOR Replacement Date, the Board-Se-
24 lected Benchmark Replacement shall, by operation of law,

1 be the Benchmark Replacement for any LIBOR Contract
2 that, after giving any effect to subsection (b)—

3 (1) contains no Fallback Provisions; or

4 (2) contains Fallback Provisions that identify

5 neither—

6 (A) a specific Benchmark Replacement;

7 nor

8 (B) a Determining Person.

9 (b) On the LIBOR Replacement Date, any references
10 in the Fallback Provisions of a LIBOR Contract to—

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

15 (2) a requirement that a person (other than a
16 Benchmark Administrator) conduct a poll, survey, or
17 inquiries for quotes or information concerning inter-
18 bank lending or deposit rates,

19 shall be disregarded as if not included in the Fallback Pro-
20 visions of such LIBOR Contract and shall be deemed null
21 and void and without any force or effect.

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

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

4 (1) irrevocable;

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

9 (3) used in any determinations of the Bench-
10 mark under or in respect of such LIBOR Contract
11 occurring on and after the LIBOR Replacement
12 Date.

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

20 (f) If the Board-Selected Benchmark Replacement
21 becomes the Benchmark Replacement for a LIBOR Con-
22 tract pursuant to subsection (a), (c), or (e) then all Bench-
23 mark Replacement Conforming Changes shall become an
24 integral part of such LIBOR Contract by operation of law.
25 For the avoidance of doubt, a Calculating Person shall not

1 be required to obtain consent from any other person prior
2 to the adoption of Benchmark Replacement Conforming
3 Changes.

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

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

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

15 (3) any LIBOR Contract subject to subsection
16 (c) as to which a Determining Person does not elect
17 to use a Board-Selected Benchmark Replacement
18 pursuant to subsection (c), except to the extent that
19 such LIBOR Contract is subject to subsection (b) or
20 (e);

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

1 (5) any provisions of Federal consumer finan-
2 cial law that require creditors to notify borrowers re-
3 garding a change-in-terms or that govern the re-
4 evaluation of rate increases on credit card accounts
5 under open-end (not home-secured) consumer credit
6 plans.

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

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

14 (a) A Board-Selected Benchmark Replacement and
15 the selection or use of a Board-Selected Benchmark Re-
16 placement as a Benchmark Replacement under or in re-
17 spect of a LIBOR Contract, as well as any Benchmark
18 Replacement Conforming Changes, by operation of section
19 4 shall constitute—

20 (1) a commercially reasonable replacement for
21 and a commercially substantial equivalent to
22 LIBOR;

23 (2) a reasonable, comparable, or analogous rate,
24 index, or term for LIBOR;

1 (3) a replacement that is based on a method-
2 ology or information that is similar or comparable to
3 LIBOR;

4 (4) substantial performance by any person of
5 any right or obligation relating to or based on
6 LIBOR; and

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

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

1 any LIBOR Contract, or (iv) voiding or nullifying any
2 LIBOR Contract.

3 (c) No person shall be subject to any claim or cause
4 of action in law or equity or request for equitable relief,
5 or have liability for damages, arising out of—

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

8 (2) the implementation of Benchmark Replace-
9 ment Conforming Changes, or

10 (3) with respect to a LIBOR Contract that is
11 not a Consumer Loan, the determination of Bench-
12 mark Replacement Conforming Changes,

13 in each case after giving effect to the provisions of section
14 4; provided, however, that in each case any person (includ-
15 ing a Calculating Person) shall remain subject to the
16 terms of a LIBOR Contract that are not affected by this
17 Act and any existing legal, regulatory, or contractual obli-
18 gations to correct servicing or other ministerial errors
19 under or in respect of a LIBOR Contract.

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

1 (1) be an amendment or modification of any
2 LIBOR Contract for the purpose of the governing
3 law of such LIBOR Contract; or

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

7 (e) Except as provided in either subsections (a), (b),
8 or (c) of section 4, the provisions of this Act shall not
9 be interpreted as creating any negative inference or nega-
10 tive presumption regarding the validity or enforceability
11 of—

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

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

22 **SEC. 6. PREEMPTION.**

23 (a) This Act and the regulations hereunder shall su-
24 persede any and all laws, statutes, rules, regulations, or
25 standards of any State, the District of Columbia, or any

1 territory or possession of the United States, insofar as
2 they provide for the selection or use of a Benchmark Re-
3 placement or related conforming changes.

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

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

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

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

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

22 **SEC. 8. RULEMAKING.**

23 Not later than 180 days after the date of enactment
24 of this Act, the Board shall issue such regulations as may

1 be necessary or appropriate to enable it to administer and
2 carry out the purposes of this Act.

3 **SEC. 9. REVISED CALCULATION RULE TO ADDRESS IN-**
4 **STANCES WHERE 1-MONTH USD LIBOR**
5 **CEASES OR IS NON-REPRESENTATIVE.**

6 Section 438(b)(2)(I) of the Higher Education Act of
7 1965 (20 U.S.C. 1087–1(b)(2)(I)) is amended by adding
8 at the end the following:

9 “(viii) REVISED CALCULATION RULE
10 TO ADDRESS INSTANCES WHERE 1-MONTH
11 USD LIBOR CEASES OR IS NON-REP-
12 RESENTATIVE.—

13 “(I) SUBSTITUTE REFERENCE
14 INDEX.—The provisions of this clause
15 apply to loans for which the special al-
16 lowance payment would otherwise be
17 calculated pursuant to clause (vii).

18 “(II) CALCULATION BASED ON
19 SOFR.—For loans described in sub-
20 clause (III) or (IV), the special allow-
21 ance payment described in this sub-
22 clause shall be substituted for the
23 payment provided under clause (vii).
24 For each calendar quarter, the for-
25 mula for computing the special allow-

1 ance that would otherwise apply under
2 clause (vii) shall be revised by sub-
3 stituting ‘of the quotes of the 30-day
4 Average Secured Overnight Financing
5 Rate (SOFR) in effect for each of the
6 days in such quarter as published by
7 the Federal Reserve Bank of New
8 York (or a successor administrator),
9 adjusted daily by adding the Tenor
10 Spread Adjustment, as that term is
11 defined in the Adjustable Interest
12 Rate (LIBOR) Act of 2021, for 1-
13 month LIBOR contracts of 0.11448
14 percent’ for ‘of the 1-month London
15 Inter Bank Offered Rate (LIBOR) for
16 United States dollars in effect for
17 each of the days in such quarter as
18 compiled and released by the British
19 Bankers Association’. The special al-
20 lowance calculation for loans subject
21 to clause (vii) shall otherwise remain
22 in effect.

23 “(III) LOANS ELIGIBLE FOR
24 SOFR-BASED CALCULATION.—Except
25 as provided in subclause (IV), the spe-

1 cial allowance payment calculated
2 under subclause (II) shall apply to all
3 loans for which the holder (or, if the
4 holder acts as an eligible lender trust-
5 ee for the beneficial owner of the loan,
6 the beneficial owner of the loan) at
7 any time after the effective date of
8 this clause notifies the Secretary that
9 the holder or beneficial owner affirma-
10 tively and permanently elects to waive
11 all contractual, statutory, or other
12 legal rights to a special allowance paid
13 under clause (vii) or to the special al-
14 lowance paid pursuant to any other
15 formula that was previously in effect
16 with respect to such loan, and accepts
17 the rate described in subclause (II).
18 Any such waiver shall apply to all
19 loans then held, or to be held from
20 time to time, by such holder or bene-
21 ficial owner; provided that, due to the
22 need to obtain the approval of one of
23 the following, demonstrated to the
24 satisfaction of the Secretary—

1 “(aa) one or more third par-
2 ties with a legal or beneficial in-
3 terest in loans eligible for the
4 SOFR-based calculation, or
5 “(bb) a nationally recog-
6 nized rating organization assign-
7 ing a rating to a financing se-
8 cured by loans otherwise eligible
9 for the SOFR-based calculation,
10 the holder of the loan (or, if the hold-
11 er acts as an eligible lender trustee
12 for the beneficial owner of the loan,
13 the beneficial owner of the loan) may
14 elect to apply the rate described in
15 subclause (II) to specified loan port-
16 folios established for financing pur-
17 poses by separate notices with dif-
18 ferent effective dates. The special al-
19 lowance rate based on SOFR shall be
20 effective with respect to a portfolio as
21 of the first day of the calendar quar-
22 ter following the applicable effective
23 date of the waiver received by the Sec-
24 retary from the holder or beneficial
25 owner and shall permanently and ir-

1 revocably continue for all subsequent
2 quarters.

3 “(IV) FALLBACK PROVISIONS.—

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

12 “(AA) the date on
13 which the ICE Benchmark
14 Administration (‘IBA’) has
15 permanently or indefinitely
16 stopped providing the 1-
17 month United States Dollar
18 LIBOR (‘1-month USD
19 LIBOR’) to the general pub-
20 lic,

21 “(BB) the effective
22 date of an official public
23 statement by the IBA or its
24 regulator that the 1-month
25 USD LIBOR is no longer

1 reliable or no longer rep-
2 resentative, or

3 “(CC) the LIBOR Re-
4 placement Date, as that
5 term is defined in section 3
6 of the Adjustable Interest
7 Rate (LIBOR) Act of 2021,
8 the special allowance rate calcula-
9 tion as described in subclause
10 (II) shall, by operation of law,
11 apply to all loans in such port-
12 folio.

13 “(bb) In such event—

14 “(AA) the last deter-
15 mined rate of special allow-
16 ance based on 1-month USD
17 LIBOR will continue to
18 apply until the end of the
19 then current calendar quar-
20 ter; and

21 “(BB) the special al-
22 lowance rate calculation as
23 described in subclause (II)
24 shall become effective as of
25 the first day of the following

1 calendar quarter and remain
2 in effect for all subsequent
3 calendar quarters.”.