

117TH CONGRESS  
1ST SESSION

# H. R. 4616

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IN THE SENATE OF THE UNITED STATES

DECEMBER 9, 2021

Received; read twice and referred to the Committee on Banking, Housing, and  
Urban Affairs

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## AN ACT

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,*

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 of this Act—

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

25 (2) to preclude litigation related to existing con-  
26 tracts the terms of which do not provide for the use

1 of a clearly defined or practicable replacement  
2 benchmark rate; and

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

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

10 **SEC. 3. DEFINITIONS.**

11 As used in this Act, the following terms shall have  
12 the following meanings:

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

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

21 (3) “Benchmark Replacement” shall mean a  
22 Benchmark, or an interest rate or dividend rate  
23 (which may or may not be based in whole or in part  
24 on a prior setting of LIBOR), to replace LIBOR or  
25 any interest rate or dividend rate based on LIBOR,

1       whether on a temporary, permanent, or indefinite  
2       basis, under or in respect of a LIBOR Contract.

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

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

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

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.

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

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

22          (8) “Consumer Loan” shall mean a consumer  
23          credit transaction. For purposes of this paragraph,  
24          the terms “consumer” and “credit” have the mean-

1 ing given those terms, respectively, under section  
2 103 of the Truth in Lending Act (15 U.S.C. 1602).

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

10 (10) “Fallback Provisions” shall mean terms in  
11 a LIBOR Contract for determining a Benchmark  
12 Replacement, including any terms relating to the  
13 date on which the Benchmark Replacement becomes  
14 effective.

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

22 (12) “LIBOR Contract” shall mean, without  
23 limitation, any contract, agreement, indenture, orga-  
24 nizational documents, guarantee, mortgage, deed of  
25 trust, lease, Security (whether representing debt or

1 equity, and including any interest in a corporation,  
2 a partnership, or a limited liability company), instru-  
3 ment, or other obligation or asset that, by its terms,  
4 continues in any way to use LIBOR as a Bench-  
5 mark as of the applicable LIBOR Replacement  
6 Date.

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

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

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

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

20 (A) 0.00644 percent for overnight LIBOR;

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

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

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

24 and

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

1 **SEC. 4. LIBOR CONTRACTS.**

2 (a) On the LIBOR Replacement Date, the Board-Se-  
3 lected Benchmark Replacement shall, by operation of law,  
4 be the Benchmark Replacement for any LIBOR Contract  
5 that, after giving any effect to subsection (b)—

6 (1) contains no Fallback Provisions; or

7 (2) contains Fallback Provisions that identify  
8 neither—

9 (A) a specific Benchmark Replacement;

10 nor

11 (B) a Determining Person.

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

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

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

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

25 (c) Subject to subsection (g)(2), a Determining Per-  
26 son shall have authority under this Act, but shall not be



1 required, to select the Board-Selected Benchmark Re-  
2 placement as the Benchmark Replacement.

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 of the Bench-  
12 mark under or in respect of such LIBOR Contract  
13 occurring on and after the LIBOR Replacement  
14 Date.

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

22 (f) If the Board-Selected Benchmark Replacement  
23 becomes the Benchmark Replacement for a LIBOR Con-  
24 tract pursuant to subsection (a), (c), or (e) then all Bench-  
25 mark Replacement Conforming Changes shall become an

1 integral part of such LIBOR Contract by operation of law.  
2 For the avoidance of doubt, a Calculating Person shall not  
3 be required to obtain consent from any other person prior  
4 to the adoption of Benchmark Replacement Conforming  
5 Changes.

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

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

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

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

23 (4) the application to a Board-Selected Bench-  
24 mark Replacement of any cap, floor, modifier, or

1 spread adjustment to which LIBOR had been sub-  
2 ject pursuant to the terms of a LIBOR Contract; or

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

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

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

16 (a) A Board-Selected Benchmark Replacement and  
17 the selection or use of a Board-Selected Benchmark Re-  
18 placement as a Benchmark Replacement under or in re-  
19 spect of a LIBOR Contract, as well as any Benchmark  
20 Replacement Conforming Changes, by operation of section  
21 4 shall constitute—

22 (1) a commercially reasonable replacement for  
23 and a commercially substantial equivalent to  
24 LIBOR;

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

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

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

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

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

1 under any LIBOR Contract, (iii) constituting a breach of  
2 any LIBOR Contract, or (iv) voiding or nullifying any  
3 LIBOR Contract.

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

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

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

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

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

21 (d) The selection or use of a Board-Selected Bench-  
22 mark Replacement or the determination, implementation,  
23 or performance of Benchmark Replacement Conforming  
24 Changes, in each case by operation of section 4, shall not  
25 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.”.

Passed the House of Representatives December 8,  
2021.

Attest: CHERYL L. JOHNSON,  
*Clerk.*