[DISCUSSION DRAFT]

117TH CONGRESS 1ST Sessions

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.

IN THE HOUSE OF REPRESENTATIVES

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

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
4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Adjustable Interest
6 Rate (LIBOR) Act of 2021”.
7 SEC. 2. FINDINGS AND PURPOSE.
8 (a) FINDINGS.—The Congress finds that—
(1) the U.S. dollar LIBOR is used as a benchmark rate in more than $200 trillion of contracts worldwide;

(2) a significant number of existing contracts that reference the U.S. dollar LIBOR do not provide for the use of a clearly defined fallback benchmark rate if the U.S. dollar LIBOR is discontinued; and

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

(2) to preclude litigation related to existing contracts that do not provide for the use of a clearly defined fallback benchmark rate; and

(3) to allow existing contracts that reference LIBOR but provide for the use of a clearly defined fallback benchmark rate to operate according to the terms of such contracts.
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 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.

(3) “Benchmark Replacement Conforming Changes” shall mean, with respect to any LIBOR Contract, any technical, administrative, or operational changes, alterations, or modifications that, in the reasonable judgment of a Calculating Person, are necessary to permit the administration and calculation of the Board-Selected Benchmark Replacement under or in respect of such LIBOR Contract in a manner consistent with standard or recommended market practice and, to the extent practicable, the manner in which such LIBOR Contract
was administered immediately prior to the LIBOR Replacement Date.

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

(5) “Board-Selected Benchmark Replacement” shall mean a Benchmark Replacement identified by the Board that is based on SOFR. The Board-Selected Benchmark Replacement for each category of LIBOR Contract shall be adjusted to—

(A) apply to each LIBOR tenor; and

(B) account for the median historical difference between LIBOR and SOFR.

(6) “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.

(7) “Determining Person” shall mean, with respect to any LIBOR Contract, any person with the authority, right, or obligation to determine the Benchmark Replacement that will take effect on the LIBOR Replacement Date.

(8) “Fallback Provisions” shall mean terms in a LIBOR Contract that set forth a methodology or procedure for determining a Benchmark Replace-
ment, including any terms relating to the date on which the Benchmark Replacement becomes effective.

(9) “LIBOR” shall mean 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), including any tenor thereof.

(10) “LIBOR Contract” shall mean, without limitation, any contract, agreement, 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 that uses LIBOR as a Benchmark.

(11) “LIBOR Replacement Date” shall mean, unless the Board determines that any LIBOR tenor will cease to be published or cease to be representative on a different date, January 1, 2022 (in the case of the 1-week and 2-month LIBOR tenors) and July 1, 2023 (in the case of the overnight and 1-, 3-, 6-, and 12-month LIBOR tenors); provided, however, that a LIBOR Replacement Date for one or more LIBOR tenors shall not constitute a LIBOR
Replacement Date with respect to any LIBOR Contract that—

(A) provides for only one LIBOR tenor, if the terms of such LIBOR Contract require interpolation and such tenor can be interpolated from other LIBOR tenors that have a later LIBOR Replacement Date; or

(B) permits a party to choose from more than one LIBOR tenor and any such LIBOR tenor—

(i) has a later LIBOR Replacement Date; or

(ii) can, if the contract requires interpolation, be interpolated from other LIBOR tenors that have a later LIBOR Replacement Date.

(12) “SOFR” shall mean, with respect to any day, the Secured Overnight Financing Rate published by the Federal Reserve Bank of New York (or a successor administrator).

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—
(1) contains no Fallback Provisions; or

(2) contains Fallback Provisions that result in 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).

(b) Following the effective date of this Act, any Fallback Provisions in a LIBOR Contract that provide for a Benchmark Replacement based on or otherwise involving a poll, survey, or inquiries for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR shall be disregarded as if not included in such LIBOR Contract and shall be deemed null and void and without any force or effect.

(c) A Determining Person shall have authority under this Act, but shall not be required, to select on or after the effective date of this Act the Board-Selected Benchmark Replacement as the Benchmark Replacement; provided, however, that a Determining Person shall not have such authority if the LIBOR Contract requires the Determining Person to select another specified Benchmark Replacement (including, but not limited to, the prime rate or the Effective Federal Funds Rate) that is not based on LIBOR and does not involve a poll, survey, or inquiries
for quotes or information concerning interbank lending rates.

(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 based on LIBOR under or in respect of such LIBOR Contract occurring on and after the LIBOR Replacement Date.

(e) If a Board-Selected Benchmark Replacement becomes the Benchmark Replacement for a LIBOR Contract pursuant to subsection (a) or (c), then all Benchmark Replacement Conforming Changes shall become an integral part of such LIBOR Contract by operation of law.

(f) The provisions of this Act shall not alter or impair—

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

(2) any LIBOR Contract that contains Fallback Provisions that would result in a Benchmark
Replacement that is not based on LIBOR (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 (c) as to which a Determining Person does not elect to use a Board-Selected Benchmark Replacement pursuant to subsection (e), except that such LIBOR Contract shall be subject to subsection (b);

(4) the application to a Board-Selected Benchmark Replacement of any cap, floor, modifier, or spread adjustment to which LIBOR had been subject pursuant to the terms of a LIBOR Contract;

(5) any LIBOR Contract that provides for a special allowance payment to be calculated in accordance with a Federal statute that explicitly names LIBOR; or

(6) any provision of the Real Estate Settlement Procedures Act or the regulations issued thereunder.

SEC. 5. CONTINUITY OF CONTRACT AND SAFE HARBOR.

(a) The selection or use of a Board-Selected Benchmark Replacement as a Benchmark Replacement under or in respect of a LIBOR Contract 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
term for LIBOR;
(3) a replacement that is based on a methodology or information that is similar or comparable to
LIBOR; and
(4) substantial performance by any person of
any right or obligation relating to or based on
LIBOR.
(b) None of—
(1) a LIBOR Replacement Date;
(2) the selection or use of a Board-Selected
Benchmark Replacement as a Benchmark Replace-
ment; or
(3) the determination, implementation, or per-
formance 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 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.

(e) No person shall be subject to any claim or cause of action in law or equity or have liability for damages, arising out of or related to the selection or use of a Board-Selected Benchmark Replacement or the determination or performance of Benchmark Replacement Conforming Changes, in each case by operation of section 4.

(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; 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 subsection (a) or (c) 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 or determining a spread adjustment) 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. TAX TREATMENT.

None of—

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

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

(3) the application to any LIBOR Contract of, or the agreement by parties thereto to terms consistent with, section 4 of this Act, shall be treated
as a sale, exchange or other disposition of property

SEC. 7. PREEMPTION.

(a) This Act and the regulations hereunder shall su-
persede any and all laws of any State, the District of Co-
lumbia, or any territory or possession of the United
States, insofar as such laws provide for the selection or
use of a Benchmark Replacement.

(b) No provision of any State or local law that ex-
pressly limits the manner of calculating interest, including
the compounding of interest, shall apply to the selection
or use of a Board-Selected Benchmark Replacement by
operation of section 4, and any State or local law to the
contrary is hereby preempted.

SEC. 8. 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 pay-
ment of the principal of and interest on such inden-
ture 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. 9. RULEMAKING.

The Board is authorized to issue such regulations as
may be necessary to enable it to administer and carry out
the purposes of this Act; provided, however, that the Sec-
etary of the Treasury is authorized to issue such regula-
tions as may be necessary to enable it to administer and
carry out the purposes of section 6 of this Act.