

business enterprises owned and controlled by socially and economically disadvantaged individuals), to provide technical assistance to business enterprises owned and controlled by socially and economically disadvantaged individuals applying to—

(A) State programs under the Program; and

(B) other State or Federal programs that support small businesses.

(Pub. L. 111-240, title III, § 3009, Sept. 27, 2010, 124 Stat. 2580; Pub. L. 117-2, title III, § 3301(a)(1)(F), (d), Mar. 11, 2021, 135 Stat. 69, 70.)

AMENDMENTS

2021—Subsecs. (c), (d). Pub. L. 117-2, § 3301(a)(1)(F), substituted “March 11, 2021” for “September 27, 2010”. Subsec. (e). Pub. L. 117-2, § 3301(d), added subsec. (e).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-2 applicable with respect to funds appropriated under section 3301 of Pub. L. 117-2 and funds appropriated on and after Mar. 11, 2021, see section 3301(g) of Pub. L. 117-2, set out as a note under section 5701 of this title.

§ 5709. Regulations

The Secretary, in consultation with the Administrator of the Small Business Administration, shall issue such regulations and other guidance as the Secretary determines necessary or appropriate to implement this chapter including to define terms, to establish compliance and reporting requirements, and such other terms and conditions necessary to carry out the purposes of this chapter.

(Pub. L. 111-240, title III, § 3010, Sept. 27, 2010, 124 Stat. 2581.)

§ 5710. Oversight and audits

(a) Inspector General oversight

The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of the use of funds made available under the Program.

(b) Required certification

(1) Financial institutions certification

With respect to funds received by a participating State under the Program, any financial institution that receives a loan, a loan guarantee, or other financial assistance using such funds after March 11, 2021, shall certify that such institution is in compliance with the requirements of section 103.121 of title 31, Code of Federal Regulations, a regulation that, at a minimum, requires financial institutions, as that term is defined in section 5312(a)(2) and (c)(1)(A) of title 31, to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify the person's identity, and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

(2) Sex offense certification

With respect to funds received by a participating State under the Program, any private entity that receives a loan, a loan guarantee, or other financial assistance using such funds after March 11, 2021, shall certify to the participating State that the principals of such entity have not been convicted of a sex offense against a minor (as such terms are defined in section 20911 of title 34).

(c) Prohibition on pornography

None of the funds made available under this chapter may be used to pay the salary of any individual engaged in activities related to the Program who has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

(Pub. L. 111-240, title III, § 3011, Sept. 27, 2010, 124 Stat. 2581; Pub. L. 113-188, title IX, § 901(d), Nov. 26, 2014, 128 Stat. 2020; Pub. L. 117-2, title III, § 3301(a)(1)(G), Mar. 11, 2021, 135 Stat. 69.)

Editorial Notes

AMENDMENTS

2021—Subsec. (b). Pub. L. 117-2 substituted “March 11, 2021” for “September 27, 2010” in pars. (1) and (2).

2014—Subsecs. (b) to (d). Pub. L. 113-188 redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b). Prior to amendment, text of subsec. (b) read as follows: “The Comptroller General of the United States shall perform an annual audit of the Program and issue a report to the appropriate committees of Congress containing the results of such audit.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-2 applicable with respect to funds appropriated under section 3301 of Pub. L. 117-2 and funds appropriated on and after Mar. 11, 2021, see section 3301(g) of Pub. L. 117-2, set out as a note under section 5701 of this title.

CHAPTER 55—ADJUSTABLE INTEREST RATE (LIBOR)

Sec.	
5801.	Findings and purpose.
5802.	Definitions.
5803.	LIBOR contracts.
5804.	Continuity of contract and safe harbor.
5805.	Benchmark for loans.
5806.	Preemption.
5807.	Rulemaking.

§ 5801. Findings and purpose

(a) Findings

Congress finds that—

(1) LIBOR is used as a benchmark rate in more than \$200,000,000,000 worth 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 nonrepresentativeness 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 chapter—

(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;

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

(4) to address LIBOR references in Federal law.

(Pub. L. 117–103, div. U, §102, Mar. 15, 2022, 136 Stat. 825.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this division”, meaning div. U of Pub. L. 117–103, Mar. 15, 2022, 136 Stat. 825, known as the Adjustable Interest Rate (LIBOR) Act, which is classified principally to this chapter. For complete classification of div. U to the Code, see Short Title note set out below and Tables.

Statutory Notes and Related Subsidiaries

SHORT TITLE

Pub. L. 117–103, div. U, §101, Mar. 15, 2022, 136 Stat. 825, provided that: “This division [enacting this chapter and amending section 77ppp of Title 15, Commerce and Trade, and section 1087–1 of Title 20, Education] may be cited as the ‘Adjustable Interest Rate (LIBOR) Act’.”

§ 5802. Definitions

In this chapter:

(1) Benchmark

The term “benchmark” means 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

The term “benchmark administrator” means a person that publishes a benchmark for use by third parties.

(3) Benchmark replacement

The term “benchmark replacement” means 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 with respect to a LIBOR contract.

(4) Benchmark replacement conforming changes

The term “benchmark replacement conforming changes” means any technical, administrative, or operational changes, alterations, or modifications that—

(A) the Board determines, in its discretion, would address 1 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 with respect to a LIBOR contract after giving due consideration to any benchmark replacement conforming changes under subparagraph (A).

(5) Board

The term “Board” means the Board of Governors of the Federal Reserve System.

(6) Board-selected benchmark replacement

The term “Board-selected benchmark replacement” means a benchmark replacement identified by the Board that is based on SOFR, including any tenor spread adjustment pursuant to section 5803(e) of this title.

(7) Calculating person

The term “calculating person” means, with respect to any LIBOR contract, any person, including the determining person, responsible for calculating or determining any valuation, payment, or other measurement based on a benchmark.

(8) Consumer; credit

The terms “consumer” and “credit” have the meanings given the terms in section 1602 of title 15.

(9) Consumer loan

The term “consumer loan” means a consumer credit transaction.

(10) Determining person

The term “determining person” means, with respect to any LIBOR contract, any person with the authority, right, or obligation, including on a temporary basis (as identified by the LIBOR contract or by the governing law of the LIBOR contract, as appropriate) to determine a benchmark replacement.

(11) Fallback provisions

The term “fallback provisions” means terms in a LIBOR contract for determining a benchmark replacement, including any terms relating to the date on which the benchmark replacement becomes effective.

(12) IBOR

The term “IBOR” means LIBOR, any tenor of non-U.S. dollar currency rates formerly known as the London interbank offered rate as administered by ICE Benchmark Administration Limited (or any predecessor or successor administrator thereof), and any other interbank offered rates that are expected to cease.

(13) IBOR benchmark replacement

The term “IBOR benchmark replacement” means 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 an IBOR), to replace an IBOR or any interest rate or dividend rate based on an IBOR, whether on a temporary, permanent, or indefinite basis, under or with respect to an IBOR contract.

(14) IBOR contract

The term “IBOR contract” means any contract, agreement, indenture, organizational document, guarantee, mortgage, deed of trust, lease, security (whether representing debt or equity, 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 an IBOR as a benchmark.

(15) LIBOR

The term “LIBOR”—

(A) means 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 administrator thereof); and

(B) does not include the 1-week or 2-month tenors of U.S. dollar LIBOR.

(16) LIBOR contract

The term “LIBOR contract” means any contract, agreement, indenture, organizational document, guarantee, mortgage, deed of trust, lease, security (whether representing debt or equity, including any interest in a corporation, a partnership, or a limited liability company), instrument, or other obligation or asset that, by its terms, uses LIBOR as a benchmark.

(17) LIBOR replacement date

The term “LIBOR replacement date” means 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.

(18) Security

The term “security” has the meaning given the term in section 77b(a) of title 15.

(19) SOFR

The term “SOFR” means the Secured Overnight Financing Rate published by the Federal Reserve Bank of New York (or a successor administrator).

(20) Tenor spread adjustment

The term “tenor spread adjustment” means—

- (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.

(Pub. L. 117–103, div. U, §103, Mar. 15, 2022, 136 Stat. 826.)

Editorial Notes**REFERENCES IN TEXT**

This chapter, referred to in text, was in the original “this division”, meaning div. U of Pub. L. 117–103, Mar. 15, 2022, 136 Stat. 825, known as the Adjustable Interest Rate (LIBOR) Act, which is classified principally to this chapter. For complete classification of div. U to the Code, see Short Title note set out under section 5801 of this title and Tables.

§ 5803. LIBOR contracts**(a) In general**

On the LIBOR replacement date, the Board-selected benchmark replacement shall 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) Fallback provisions

On the LIBOR replacement date, any reference 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 interbank lending or deposit rates;

shall be disregarded as if not included in the fallback provisions of such LIBOR contract and shall be deemed null and void and without any force or effect.

(c) Authority of determining person**(1) In general**

Subject to subsection (f)(2), a determining person may select the Board-selected benchmark replacement as the benchmark replacement.

(2) Selection

Any selection by a determining person of the Board-selected benchmark replacement pursuant to paragraph (1) shall be—

- (A) irrevocable;
- (B) made by the earlier of the LIBOR replacement date and the latest date for selecting a benchmark replacement according to the terms of the LIBOR contract; and
- (C) used in any determinations of the benchmark under or with respect to the LIBOR contract occurring on and after the LIBOR replacement date.

(3) No selection

If a determining person does not select a benchmark replacement by the date specified in paragraph (2)(B), the Board-selected benchmark replacement, on and after the LIBOR replacement date, shall be the benchmark replacement for the LIBOR contract.

(d) Conforming changes**(1) In general**

If the Board-selected benchmark replacement becomes the benchmark replacement for

a LIBOR contract pursuant to subsection (a) or (c), all benchmark replacement conforming changes shall become an integral part of the LIBOR contract.

(2) No consent required

A calculating person shall not be required to obtain consent from any other person prior to the adoption of benchmark replacement conforming changes.

(e) Adjustment by Board

(1) In general

Except as provided in paragraph (2), on the LIBOR replacement date, the Board shall adjust the Board-selected benchmark replacement for each category of LIBOR contract that the Board may identify to include the relevant tenor spread adjustment.

(2) Consumer loans

For LIBOR contracts that are consumer loans, the Board shall adjust the Board-selected benchmark replacement as follows:

(A) During the 1-year period beginning on the LIBOR replacement date, incorporate an amount, to be determined for any business day during that period, that transitions linearly from the difference between the Board-selected benchmark replacement and the corresponding LIBOR tenor determined as of the day immediately before the LIBOR replacement date to the relevant tenor spread adjustment.

(B) On and after the date that is 1 year after the LIBOR replacement date, incorporate the relevant tenor spread adjustment.

(f) Rule of construction

Nothing in this chapter may be construed to alter or impair—

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

(2) except as provided in subsection (b), any LIBOR contract that contains fallback provisions that identify a benchmark replacement that is not based in any way on any LIBOR value (including the prime rate or the effective Federal funds rate);

(3) except as provided in subsection (b) or (c)(3), any LIBOR contract subject to subsection (c)(1) as to which a determining person does not elect to use a Board-selected benchmark replacement pursuant to that subsection;

(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 provision of Federal consumer financial law that—

(A) requires creditors to notify borrowers regarding a change-in-terms; or

(B) governs the reevaluation of rate increases on credit card accounts under open-ended (not home-secured) consumer credit plans; or

(6) except as provided in section 5804(c) of this title, the rights or obligations of any person, or the authorities of any agency, under

Federal consumer financial law, as defined in section 5481 of this title.

(Pub. L. 117-103, div. U, § 104, Mar. 15, 2022, 136 Stat. 828.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (f), was in the original “this division”, meaning div. U of Pub. L. 117-103, Mar. 15, 2022, 136 Stat. 825, known as the Adjustable Interest Rate (LIBOR) Act, which is classified principally to this chapter. For complete classification of div. U to the Code, see Short Title note set out under section 5801 of this title and Tables.

§ 5804. Continuity of contract and safe harbor

(a) In general

A Board-selected benchmark replacement and the selection or use of a Board-selected benchmark replacement as a benchmark replacement under or with respect to a LIBOR contract, and any benchmark replacement conforming changes, 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 (15 U.S.C. 1601 note)¹ and regulations promulgated under that division.²

(b) No impairment

Neither the selection or use of a Board-selected benchmark replacement as a benchmark replacement nor the determination, implementation, or performance of benchmark replacement conforming changes under section 5803 of this title may—

(1) 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

(2) have the effect of—

(A) discharging or excusing performance under any LIBOR contract for any reason, claim, or defense (including any force majeure or other provision in any LIBOR contract);

(B) giving any person the right to unilaterally terminate or suspend performance under any LIBOR contract;

(C) constituting a breach of any LIBOR contract; or

(D) voiding or nullifying any LIBOR contract.

(c) Safe harbor

No person shall be subject to any claim or cause of action in law or equity or request for

¹ So in original. Probably should be “(15 U.S.C. 1601 et seq.)”.

² So in original. Probably should be “that Act.”

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 5803 of this title; 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 division and any existing legal, regulatory, or contractual obligations to correct servicing or other ministerial errors under or with respect to a LIBOR contract.

(d) Selection

The selection or use of a Board-selected benchmark replacement or the determination, implementation, or performance of benchmark replacement conforming changes under section 5803 of this title shall not be deemed to—

- (1) be an amendment or modification of any LIBOR contract; or
- (2) prejudice, impair, or affect the rights, interests, or obligations of any person under or with respect to any LIBOR contract.

(e) No negative inference

Except as provided in subsections³ (a), (b), or (c)(1) of section 5803 of this title, nothing in this chapter may be construed to create 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 with respect to a LIBOR contract that are not benchmark replacement conforming changes.

(Pub. L. 117-103, div. U, §105, Mar. 15, 2022, 136 Stat. 830.)

Editorial Notes

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (a)(5), is title I of Pub. L. 90-321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 101 of Pub. L. 90-321, set out as a Short Title note under section 1601 of Title 15 and Tables.

This chapter, referred to in subsec. (e), was in the original “this division”, meaning div. U of Pub. L. 117-103, Mar. 15, 2022, 136 Stat. 825, known as the Adjustable Interest Rate (LIBOR) Act, which is classified principally to this chapter. For complete classification of div. U to the Code, see Short Title note set out under section 5801 of this title and Tables.

§ 5805. Benchmark for loans

(a) Definitions

In this section:

(1) Bank

The term “bank” means an institution subject to examination by a Federal financial institutions regulatory agency.

(2) Covered action

The term “covered action” means—

- (A) the initiation by a Federal supervisory agency of an enforcement action, including the issuance of a cease-and-desist order; or
- (B) the issuance by a Federal supervisory agency of a matter requiring attention, a matter requiring immediate attention; or a matter requiring board attention resulting from a supervisory activity conducted by the Federal supervisory agency.

(3) Federal financial institutions regulatory agency

The term “Federal financial institutions regulatory agencies” has the meaning given the term in section 3302 of this title.

(4) Federal supervisory agency

The term “Federal supervisory agency” means an agency listed in subparagraphs (A) through (H) of section 3401(7) of this title.

(5) Non-IBOR loan

The term “non-IBOR loan” means any loan that, by its terms, does not use in any way LIBOR, any tenor of non-U.S. dollar currency rates formerly known as the London interbank offered rate as administered by ICE Benchmark Administration Limited (or any predecessor or successor administrator thereof), and any other interbank offered rates that are expected to cease, as a benchmark.

(b) Benchmarks used by banks

With respect to a benchmark used by a bank—

- (1) the bank, in any non-IBOR loan made before, on, or after March 15, 2022, may use any benchmark, including a benchmark that is not SOFR, that the bank determines to be appropriate for the funding model of the bank; the needs of the customers of the bank; and the products, risk profile, risk management capabilities, and operational capabilities of the bank; provided, however, that the use of any benchmark shall remain subject to the terms of the non-IBOR loan, and applicable law; and
- (2) no Federal supervisory agency may take any covered action against the bank solely because that benchmark is not SOFR.

(Pub. L. 117-103, div. U, §106, Mar. 15, 2022, 136 Stat. 831.)

§ 5806. Preemption

This chapter, and regulations promulgated under this chapter, shall supersede any provision of any State or local law, statute, rule, regulation, or standard—

- (1) relating to the selection or use of a benchmark replacement or related conforming changes; or
- (2) expressly limiting the manner of calculating interest, including the compounding of interest, as that provision applies to the selection or use of a Board-selected benchmark replacement or benchmark replacement conforming changes.

³ So in original. Probably should be “subsection”.

(Pub. L. 117–103, div. U, §107, Mar. 15, 2022, 136 Stat. 832.)

(Pub. L. 117–103, div. U, §110, Mar. 15, 2022, 136 Stat. 834.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this division”, meaning div. U of Pub. L. 117–103, Mar. 15, 2022, 136 Stat. 825, known as the Adjustable Interest Rate (LIBOR) Act, which is classified principally to this chapter. For complete classification of div. U to the Code, see Short Title note set out under section 5801 of this title and Tables.

§ 5807. Rulemaking

Not later than 180 days after March 15, 2022, the Board shall promulgate regulations to carry out this chapter.

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this division”, meaning div. U of Pub. L. 117–103, Mar. 15, 2022, 136 Stat. 825, known as the Adjustable Interest Rate (LIBOR) Act, which is classified principally to this chapter. For complete classification of div. U to the Code, see Short Title note set out under section 5801 of this title and Tables.