

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”.