

# IBOR REFORM EXPECTATIONS AND REQUIREMENTS ON NEW USD LIBOR TRADES AFTER 31 DECEMBER 2021

BNP Paribas  
IBOR Reform Communication  
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The bank  
for a changing  
world

## Expectations and requirements on new USD LIBOR trades after December 31, 2021

On November 30, 2020, US banking regulators released [guidance](#) (the “November 2020 US Regulatory Guidance”) that encouraged transitioning away from USD LIBOR as soon as practicable, and stated that entering into new contracts referencing USD LIBOR after 2021 (subject to limited exceptions) would create safety and soundness risks upon which banks would be examined. A [follow up statement](#) released on October 20, 2021 (together with the November 2020 US Regulatory Guidance, the “US Regulatory Guidance”) re-iterated the previous guidance and provided some clarifications as to the scope of the guidance, including as to what constitutes a “new contract”. The Financial Conduct Authority in the UK has indicated similar [prohibition](#) (together with the US Regulatory Guidance, the “Regulatory Guidance”) that are generally aligned with those of the US Regulatory Guidance. In addition, the staff of the Commodity Futures Trading Commission echoed the US Regulatory Guidance, indicating that “the use of LIBOR rates in new contracts should, with very limited exceptions, be ceased as soon as practicable and no later than December 31, 2021”. Similarly, the EU authorities have published a [joint statement](#) in June 2021 that market participants are encouraged to stop using the 35 LIBOR settings, including USD LIBOR, as a reference rates in new contracts as soon as practicable and in any event by end of 2021.

BNP Paribas and its affiliates (“BNP Paribas”) are committed to supporting the orderly transition away from LIBOR and will only enter into contracts referencing USD LIBOR that are consistent with the Regulatory Guidance. This letter gives additional information about the upcoming expectations and requirements that may apply to you, as a client, should you wish to enter into LIBOR transactions with BNP Paribas after December 31, 2021.

### What is a “new contract”?

The US Regulatory Guidance indicates that a “new contract” would include an agreement that (i) creates additional LIBOR exposure for a supervised institution or (ii) extends the term of an existing LIBOR contract. The regulators further said that a draw on an existing agreement that is legally enforceable (e.g., a committed credit facility) would not be viewed as a new contract.

The following types of transactions are likely not to be considered “new” transactions under the Regulatory Guidance:

- Termination of a USD LIBOR transaction executed before January 1, 2022 (a “Pre-2022 USD LIBOR Transaction”);
- Exercises of Pre-2022 USD LIBOR Transactions that are options;
- Amendments to Pre-2022 USD LIBOR Transactions unrelated to USD LIBOR, such as amendments to collateral requirements, NAV triggers, or similar provisions that are unrelated to USD LIBOR and do not create new USD LIBOR exposure;
- Restructurings of Pre-2022 LIBOR Transactions that reduce exposure to USD LIBOR.

### What exceptions are applicable?

The US Regulatory Guidance recognized that there may be limited circumstances when it would be appropriate for a bank to enter into new USD LIBOR contracts after December 31, 2021, including:

- transactions that reduce or hedge the bank’s or any client of the bank’s USD LIBOR exposure on Pre-2022 USD LIBOR Transactions;
- market making in support of client activity related to Pre-2022 USD LIBOR Transactions;
- novations of Pre-2022 USD LIBOR Transactions;
- transactions executed for purposes of required participation in a central counterparty auction procedure in the case of a member default, including transactions to hedge the resulting USD LIBOR exposure.

## What obligations do clients have when entering into new LIBOR contracts with BNP Paribas?

BNP Paribas does not intend to engage in transactions that are inconsistent with the Regulatory Guidance and expects that its trading partners are aware of the Regulatory Guidance and will not attempt to engage in transactions with BNP Paribas that are inconsistent with the Guidance. **By continuing to transact with BNP Paribas, you acknowledge and agree that you are aware of the Regulatory Guidance and that you will only engage in USD LIBOR-referencing transactions with BNP Paribas to the extent consistent with the Regulatory Guidance.** This means, for “new” contracts that are not entered into by novation or as part of a required central counterparty auction, that the transaction is reducing or hedging your USD LIBOR exposure related to Pre-2022 USD LIBOR Transactions, unless you understand the transaction to be entered into by BNP Paribas for the purpose of reducing or hedging BNP Paribas’s USD LIBOR exposure (*i.e.*, as opposed to facilitating your hedging activity).

Depending on further developments relating to the Regulatory Guidance and the circumstances of your trading activity, BNP Paribas may ask you to provide further information in order to confirm the permissibility of transactions under the Regulatory Guidance, including (i) asking for a written representation letter to cover transactions that you execute with BNP Paribas going forward, (ii) seeking verbal confirmation of the availability of an exception at the time a transaction is executed, or (iii) seeking post-trade verification of the availability of the exception. Although you are not obligated to provide any such information, failure to do so may, under some circumstances, lead to a restriction on your ability to enter into further USD LIBOR-referencing transactions with BNP Paribas.

## What is the impact on your clearing activity with BNP Paribas?

BNP Paribas will continue to accept for clearing USD LIBOR-referencing transactions post 31st December 2021 (subject to clearing eligibility criteria and applicable limits), however acceptance is based on your acknowledgement and agreement that you are aware of the Regulatory Guidance and that you will only engage in USD LIBOR-referencing transactions to the extent consistent and permissible within the Regulatory Guidance and associated exceptions.

## What alternatives to USD LIBOR are available?

The Secured Overnight Financing Rate (“SOFR”) has been designated by the Alternate Reference Rates Committee (“ARRC”) as the recommended alternative to USD LIBOR, and BNP Paribas is able to enter into derivatives transactions that are based on SOFR, including compounded and averaged indexes. Depending on your needs in the context of a particular transaction, other rates such as Federal Funds Effective Rate or the Overnight Bank Funding Rate, for example, may also be appropriate alternative benchmark rates. In accordance with the [ARRC Best Practice Recommendations Related to Scope of Use of the Term Rate](#), BNP Paribas is able to enter into Term SOFR derivatives only with counterparties who are end users that are hedging their exposure to a cash product that references Term SOFR.

## What risks do clients face?

More information on the possible risks relating to LIBOR transition and benchmark reform can be found in the [Notice Concerning Reference Rates and Indices](#). You should note that many of the risks described in these documents could be amplified or heightened following December 31, 2021, when significant portions of the market will be unable or unwilling to enter into many new types of USD LIBOR transactions. It is possible that the market for new USD LIBOR transactions could experience materially reduced liquidity or pricing transparency. In addition, if you enter into a post-2021 LIBOR transaction that is not permissible under the Regulatory Guidance, you may be unable to find a dealer who is willing to enter into a hedge or offset for that exposure.

## Next steps

You will need to make your own assessment as to the impact of these expectations and requirements on your business, your outstanding transactions and your commercial relationship with BNP Paribas.

In particular, if you have potential transactions for which impact of the Regulatory Guidance is not clear, or require information referenced in this communication, please reach out to your usual BNP Paribas CIB contact.

As LIBOR transition continues, you may receive further communications and additional documentation from BNP Paribas CIB.

Should you have any questions, please do not hesitate to contact your BNP Paribas representative.

Yours faithfully,

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