Subject: LIBOR-Based SAP under the Consolidated Appropriations Act, 2012

Summary: Section 309(e) of the Consolidated Appropriations Act, 2012 amended section
                438(b)(2)(I) of the HEA to allow lenders or beneficial owners of FFEL Program
                loans to substitute the 1-month London Inter Bank Offered Rate (LIBOR) for the
                3-month commercial paper rate for the purposes of Special Allowance Payment
                calculations on certain FFEL Program loans.

Dear FFEL Program Loan Holder:

On December 23, 2011 the President signed H.R. 2055, the Consolidated Appropriations Act, 2012 (Public Law 112-74). Section 309(e) of Public Law 112-74 amended section 438(b)(2)(I) of the Higher Education Act (HEA) to allow Federal Family Education Loan Program (FFELP) loan holders or an entity that holds a beneficial ownership interest in a FFELP loan (here, a "beneficial holder") to have the 1-month London Inter Bank Offered Rate (LIBOR) substituted for the 3-month commercial paper (CP) rate for the purposes of Special Allowance Payment (SAP) calculations on certain FFELP loans described below in this letter. If a FFELP lender or beneficial holder wishes to have SAP calculated on LIBOR rather than on CP, it must, no later than April 1, 2012, waive any right to have SAP calculated on the basis of the previously-applicable 3-month CP rate. By doing so, the lender or beneficial holder elects to have SAP thereafter calculated at the LIBOR rate for its designated FFELP loans.

Loans Eligible for a CP Waiver. Federal Family Education Loan Program (FFELP) loans on which the first disbursement was made on or after January 1, 2000, and before July 1, 2010, are eligible for a CP waiver.

Loans Included Within a CP Waiver. A FFELP lender or beneficial holder can provide the required CP waiver for loans to which it holds title or a beneficial ownership interest. Unless that party also applies for and is granted an exception, as discussed below, and without regard to the Lender ID (LID) with which an eligible loan may be associated, a CP waiver by a FFELP lender or beneficial holder changes the SAP calculation from one that is CP-based to one that is LIBOR-based for the following groups of eligible loans –

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- All loans held by that FFELP lender in its own right on April 1, 2012;

- All loans in which that beneficial holder has a beneficial ownership interest on April 1, 2012, without regard to whether the FFELP lender that holds title to those loans as eligible lender trustee (ELT) made a CP waiver;

- All loans held by a FFELP lender as ELT for another FFELP lender where the other FFELP lender made a CP waiver without regard to whether the ELT itself made a CP waiver;

- All loans acquired by a FFELP lender in its own right from any party after the date of that lender's own CP waiver, without regard to whether the prior holder made a CP waiver;

- All loans for which a FFELP lender or beneficial holder that makes a CP waiver acquires a beneficial ownership interest from any party after the date of its own CP waiver, without regard to whether the prior lender or holder itself made a CP waiver.

- All eligible loans in which any FFELP lender or beneficial holder acquires an ownership interest for which any prior holder made a CP waiver, or made subject to a CP waiver, without regard to whether the current lender or beneficial holder made a CP waiver.

SAP Affected by a CP Waiver. All SAP calculated for periods beginning on or after April 1, 2012 on loans that are or have become included within a CP waiver, as described above, will be calculated at the LIBOR rate.

SAP Adjustments. Adjustments of SAP on loans included within or affected by a CP waiver will be made based on the rate in effect for the period for which the adjustment is made. For example, if an adjustment was submitted in July 2012 for SAP calculated for the quarter ending March 31, 2012, on an eligible loan that was included in a waiver, the adjustment would be calculated using the CP rate. Conversely, if an adjustment was submitted in October 2012, for SAP calculated for the quarter ending June 30, 2012, on an eligible loan that was included in a waiver, the adjustment would be calculated using the LIBOR rate.

Loans Excepted from a CP Waiver. A lender or beneficial holder that makes a CP waiver can request an exception from that waiver for certain eligible loans held or acquired by the lender or holder. To except loans from a CP waiver, the lender or holder must submit to the Department evidence that demonstrates to the satisfaction of the Department that the loans meet either of the following two conditions:

1. <u>Contractual Restriction</u> The lender or beneficial holder of such loans is subject to an agreement entered into prior to December 23, 2011, which requires the lender or holder to obtain approval for the CP waiver from a party or parties with an interest in the loans, that the lender or holder has pursued all available options under the agreement to obtain the required approval(s), and that the lender or holder has been unable to do so.

    For purposes of this provision –

    An "agreement" includes any contract or other legally-binding commitment voluntarily made by the lender or beneficial holder of the loan, including but not limited to bond indentures, that includes an agreement that prohibits the lender or beneficial holder from making a CP waiver and provides no options for modification of that prohibition. An "interest in the loans" means a legal or beneficial ownership interest in the loans or a security interest in the loans. "All available options" does not include litigation.

2. <u>Rating Agency Downgrade</u> The loans are associated with an obligation rated by a nationally recognized statistical rating organization and the lender or beneficial holder of such loans has presented the proposal of making a CP waiver to the rating agency and the rating agency has provided a written opinion to the lender or holder that the agency would downgrade the rating applicable to such obligation if the lender or beneficial owner were to make a CP waiver.

SAP Affected by Exception to CP Waiver.   SAP will be calculated at the CP rate for periods beginning on or after April 1, 2012 on loans that are owned, or on which there is a beneficial interest, on that date by a lender or beneficial holder for periods during which the loans remain subject to the agreement on which the exception was granted or financed by the obligation for which the exception was approved.

SAP will be calculated at the LIBOR rate on loans owned, or on which there is a beneficial interest, by the lender or beneficial holder on April 1, 2012 and subject to an approved exception after the qualifying condition no longer applies to the loans because, for example, the loans have been refinanced by a different obligation, the agreement no longer applies to the loans, or required approvals have been obtained.

SAP on loans acquired after April 1, 2012 by the lender or holder that obtains an approved exception from its CP waiver will be calculated at the CP rate for periods for which the following conditions are met-

- The loans are acquired from a lender or holder that did not make a CP waiver, and the loans were not previously made subject to a LIBOR rate SAP calculation by virtue of inclusion within a CP waiver by any other party;

- The loans are subject to the agreement on which the exception was based, or are acquired with funds derived from the obligation for which the rating agency has threatened downgrade; and

- The loans have not been refinanced by another obligation or released from the agreement for which the exception was approved.

Filing Requirements – CP Waiver and Exception

CP Waiver - To exercise the CP waiver option a lender or a beneficial holder of eligible FFELP loans must, by April 1, 2012, submit to the Department of Education, under the procedures described below, a duly executed CP Waiver (see note below) -

- Executed by the chief executive officer of the lender or beneficial holder;

- Executed by an official of the lender or beneficial holder who is duly authorized to execute the waiver, as evidenced by a statement by the chief executive officer of the lender or beneficial holder certifying that the lender or beneficial holder approves the accompanying CP Waiver substantially in the form of the attached CEO Authorizing Letter; or

- Executed by an official of the lender or beneficial holder who is duly authorized to execute the waiver, as evidenced by an incumbency certificate provided by the secretary of the lender or holder that identifies the official as having authority to execute the CP waiver for the lender or holder, substantially in the form of the attached Incumbency Certificate.

Note: There are four different CP Waiver documents attached below. One is for lenders who are requesting a CP Waiver without exceptions, one is for lenders who are requesting a CP Waiver with exceptions, one is for beneficial holders who are requesting a CP Waiver without exceptions, and one is for beneficial holders who are requesting a CP Waiver with exceptions,

Exception - If a lender or beneficial holder filing a CP Waiver wishes to except some loans it owns from the CP waiver under the exception provision discussed above, it must, contemporaneously with submission of the CP Waiver, submit to the Department of Education:

1. A duly executed Exception to the CP Waiver (see attachments below for separate Exception of the CP Waiver documents for lenders and for beneficial holders); and

2. If seeking an exception for loans under Exception 1:

    - A copy of the pertinent provision(s) of the relevant agreement(s) that prohibits the making of a CP waiver or that requires the lender or beneficial holder to obtain approval from a third party with an ownership interest in the loans,

    - Identification of the third party and the nature of its interest in the loans,

    - A description of the available options for obtaining relief from the prohibition or approval from the identified third party or parties,

    - Copies of correspondence from the lender or beneficial holder to the identified third party or parties seeking approval of a CP waiver and setting forth the need for a response by March 31, 2012, and copies of any responses received by that date, or if no response is received, a certification that no response has been received; and

    - A list of the LIDs, if applicable, to which the requested exception pertains.

3. If seeking an exception for loans under Exception 2:

    - A copy of the written opinion from a rating agency stating that the rating agency would downgrade the rating applicable to the obligation pertaining to loans financed by that obligation if the lender or beneficial owner were to make a CP waiver with respect to those loans.

    - Identification of the obligation to which the opinion pertains; and

    - A list of the LIDs, if applicable, to which the requested exception pertains.

Filing Requirements - Address and Instructions

Submissions of waivers, exception requests, and other required documents are to be submitted as attachments to an email sent to FSA_LR@ed.gov. Include in the subject line of the email "LIBOR Waiver and Election". An electronic confirmation of receipt will automatically be sent to the sender's email address.

Please send all questions to FSA_LR@ed.gov.

Sincerely,

Jay Hurt, CFO
Federal Student Aid

Attachments/Enclosures:

FP-12-02: LIBOR-Based SAP in PDF Format

CP Waiver/LIBOR Election – Lender in Word Format
CP Waiver/LIBOR Election *with Exception Request* – Lender in Word Format

CP Waiver/LIBOR Election – Holder in Word Format
CP Waiver/LIBOR Election *with Exception Request* – Holder in Word Format

Exception Request – Lender in Word Format (see note below)

Exception Request – Holder in Word Format (see note below)

CEO Authorizing Statement in Word Format

Incumbency Certificate in Word Format

Note: These two documents are awaiting OMB clearance and therefore should not be submitted until the Department posts an Electronic Announcement informing the community that the documents have received OMB approval.