Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letter	Felix Baxter to Timothy Greene re: Sallie Mae (4 pages)	03/16/1995	P5 8075
002. memo	Harry McPherson to Bill Galston (5 pages)	09/16/1994	P5
003. memo	Tom Wolanin to Bill Galston re: Sallie Mae privatization (2 pages)	01/27/1995	P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Gaynor McCown (Subject Files)
OA/Box Number: 7321

FOLDER TITLE:

Sallie Mae [1]

Racheal Carter
2011-0255-S
rc649

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
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- C. Closed in accordance with restrictions contained in donor's deed of gift.
- PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
- RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

8075

March 16, 1995

Timothy Greene, Esq.
General Counsel
Student Loan Marketing Association
1050 Thomas Jefferson Street, N.W.
Washington, D.C. 20007-3871

Dear Mr. Greene:

I am writing in response to your letter of February 3, 1995, and our meeting of March 2, 1995, regarding the offset fee owed by the Student Loan Marketing Association (Sallie Mae) to the Department of Education (Department) under §439(h)(7) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1087-2(h)(7). In these communications, you have questioned the initial opinion we sent to you regarding the application of the offset fee to loans transferred by Sallie Mae to a business trust.

We appreciate all of the information you have provided and have carefully considered your arguments and views. However, as explained below, we have concluded that our initial view was correct and that the offset fee would be owed on loans transferred to a business trust.

We understand that, under current plans, Sallie Mae intends to transfer some of the loans it holds under the Federal Family Education Loan (FFEL) Program to a wholly owned subsidiary that will further sell the loans to a business trust for purposes of securitization. The subsidiary will be a passive shell that is being created only for tax and bankruptcy law purposes. An eligible lender under the HEA will act as trustee for the trust. The trust will be capitalized with debt sold to institutional investors as senior note holders and "equity" certificate holders. An indenture trustee will protect the senior note holders. The "equity" certificate holders are limited partners in the trust and have certain voting rights, but their return is limited to principal and interest and they do not share in any final profits of the trust. Sallie Mae's subsidiary holds 1% of the "equity" certificates and is the general partner of the trust and Sallie Mae receives the profits upon termination of the trust.

The detailed description of the proposed securitization you provided makes it clear that Sallie Mae will maintain a substantial role in regard to the loans involved in the securitization transaction. Sallie Mae or one of its subsidiaries will contract with the trust to service the loans in exchange for a servicing fee. In addition, Sallie Mae's wholly owned subsidiary will own one percent of the "equity

COPY

certificates issued by the trust. Sallie Mae's payment for the loans will not only include the one percent "equity" certificate and a cash payment but will also include deferred purchase price payments equal to cash flows of the trust. Ultimately, Sallie Mae receives the final profits of the trust, which is a characteristic of an owner or holder of property.

As noted in our letter to you of January 13, 1995, the HEA uses the term "holder" in a number of different contexts. The implications of that term as well as the related term "holds" used in §439(h)(7) of the HEA depends to a significant extent on the context in which it is used. Moreover, as you acknowledged during our meeting, the meaning of the term "holds" in the context of §439(h)(7) of the HEA is clearly left to the Secretary's discretion in implementing the purposes of the statute. As we noted in our previous letter, the offset fee is clearly intended to raise money for the Federal government. It was enacted as part of the Omnibus Budget Reconciliation Act of 1993 and was specifically identified in the law as a cost saving provision that would reduce the budget deficit.1/ The Secretary has to keep this purpose utmost in mind in interpreting the statutory requirements.

The ultimate issue is whether the form of Sallie Mae's proposed transaction should exempt the affected loans from the intent of Congress in requiring the payment of the offset fee. As noted above, Sallie Mae retains a substantial interest in the activities and profits of the trust that is formally the new holder of the loans. The general rule is that "a corporate entity may be disregarded in the interests of convenience, fairness and equity." Capital Telephone Co. v. FCC, 498 F.2d 734, 738 (D.C. Cir. 1974); Town of Brookline v. Gorsuch, 667 F.2d 215, 221 (1st Cir. 1981). The corporate form may not defeat overriding federal legislative policies. Thomas v. Peacock, 39 F.3d 493, 503 (4th Cir. 1994). In applying these rules the federal courts have looked closely at the purpose of the federal statute to determine whether the statute places importance on the corporate form. Town of Brookline, 667 F.2d at 221; Thomas, 39 F.3d at 504. In fact, the courts have not allowed the invocation of the corporate shield to permit an evasion of legal obligations. Thomas, 39 F.3d at 504; Alman v. Danin, 801 F.2d 1, 3-4 (1st Cir. 1986); Lowen v. Tower Asset Mgmt., 653 F.Supp. 1542, 1551 (S.D.N.Y., 1987).

Consistent with these judicial guidelines, we have determined that it is not appropriate to permit Sallie Mae to evade its legal responsibility to pay the offset fee on loans it

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1/See Pub.L. 103-66, Omnibus Budget Reconciliation Act of 1993, Title IV, Subtitle B; 139 Cong. Rec. H6135, H6157-H6158 (August 5, 1993) (Statement of Rep. Ford).

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transfers to a trust in which it has an interest. The intent of §439(h)(7) of the HEA is to require Sallie Mae to pay a fee to balance off the costs of the FFEL Program. That purpose would clearly be frustrated if Sallie Mae were permitted to avoid the fee simply by transferring loans to a trust while retaining an interest in the loans through the trust.2/ The statute requires that the fee is paid on any loan that Sallie Mae "holds" as of a certain date; it does not indicate that the fee would only apply to loans held by Sallie Mae in a certain corporate form. It is clearly inequitable to permit Sallie Mae to avoid its statutory responsibility merely by creating a business structure that only seems to remove Sallie Mae's direct contact with the loans.3/ In fact, it is inconsistent with the statutory scheme to allow Sallie Mae to use funds to which the Secretary is entitled to pay the costs associated with its privatization efforts.

Contrary to the legal opinion prepared by Skadden, Arps, Slate, Meagher & Flom on your behalf, our interpretation of §439(h)(7) of the HEA is not limited by the Department's traditional interpretation of the term "holder" in the FFEL Program. As an initial matter, we note that Congress used the term "holds" and not "holder" in §439(h)(7) and that the two terms are not necessarily synonymous. More importantly, however, the term "holds" has to be interpreted within the context of §439(h)(7) of the HEA and Congressional intent in enacting that provision.4/ That intent would not be served by an

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2/The securitization also would limit the Secretary's statutory authority to ensure that Sallie Mae fulfills its role as a lender-of-last-resort. Section 439(h)(7)(B) of the HEA permits the Secretary to increase the offset fee to 1.0 percent if Sallie Mae substantially fails to comply with its lender-of-last-resort obligations. We do not believe that Congress intended to permit Sallie Mae to escape its programmatic obligations merely by transferring its loan portfolio to a trust.

3/It is also instructive that the proposal indicates that Sallie Mae expects the transaction to be invisible to the borrowers whose loans it sells to the trust. The plan clearly contemplates that Sallie Mae will continue to service the loans thus avoiding the requirement to notify the borrowers of the transactions under §428(b)(2)(F) of the HEA.

4/As noted in our earlier letter, the Department's analysis is similar to that used by the Internal Revenue Service (IRS) in determining whether to tax income of a trust to a grantor or other person who retains certain powers over or interest in the trust or its assets. 26 C.F.R. 1.671-1. We did not intend to suggest, as Skadden, Arps claims, that the IRS would treat this

(continued...)

unnecessarily narrow reading of the term "holds".5/

Finally, I want to assure you that our interpretation of §439(h)(7) is not designed to frustrate Sallie Mae's efforts to privatize. We recognize that this opinion may have financial implications for Sallie Mae's plans. However, we do not believe that the Secretary's prior expression of support for those efforts permit the Department to interpret the HEA contrary to the intent of Congress in enacting the statutory requirement for an offset fee.

Sincerely,

Felix V. Baxter

Felix V. Baxter
Deputy General Counsel

4/(...continued) transaction as a grantor trust. That issue is clearly for the IRS to decide. However, as in the case of the IRS, it is certainly appropriate for the Department to disregard the form of a trust entity if the grantor retains certain powers. See Estate of O'Connor v. Commissioner, 69 T.C. 165 (1977). As the Supreme Court has said:

> Technical considerations, niceties of the law of trusts or conveyances, or the legal paraphernalia which inventive genius may construct as a refuge from surtaxes should not obscure the basic issue. The issue is whether the grantor after the trust has been established may still be treated, under this statutory scheme as the owner of the corpus.

Helvering v. Clifford, 309 U.S. 331, 334 (1940). Under the statutory scheme of §439(h)(7), Sallie Mae clearly can and should be treated as holding the loans.

5/We also do not agree with your argument that our interpretation of §439(h)(7) would disrupt the existing market for publicly traded student loan securities. Our interpretation does not reflect a change in the Department's traditional broad interpretation of the term "holder" for other purposes in the FFEL Program. Instead, we are interpreting a statutory provision directed to and affecting only Sallie Mae. Our interpretation of that provision does not directly affect any other entity or party.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Patricia Smith to Barry White re: TRIAD developments (2 pages)	04/28/1994	P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Gaynor McCown (Subject Files)
OA/Box Number: 7321

FOLDER TITLE:

Education [1]

2011-0255-S
rc648

RESTRICTION CODES

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E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

28-Apr-1994 08:59am

TO: Barry White

FROM: Patricia A. Smith
Office of Mgmt and Budget, LVE

CC: Bernard H. Martin
CC: Judy L. Grew
CC: Daniel J. Chenok

SUBJECT: TRIAD developments

There was a meeting in Sally Katzen's office yesterday at 4PM on the TRIAD regulations at the request of the President of the U. of Georgia, Charles Knapp. U. Georgia is a member of both the National Assoc. of State Univ. and Land Grant Colleges (NASULGC) and ACE. In attendance were Jerry Roschwalb and Terry Hartle from NASULGC and ACE respectively, a lawyer with a Georgia accent, David Longanecker, Dan Chenok, me and Keith from the OIRA office of intergovernmental affairs, through which office the request for the meeting came in.

Knapp believes that doing the reg on Elig. and Cert. as Interim Final is not enough -- there is danger of political embarrassment to the President. Through the meeting, he is letting the Administration know that the likelihood is that one or more institutions will sue.

Sally noted that the President is aware of the controversy. The problem is the law. We pulled back to the law where possible. We hope they will help us send the message to Congress that the problem is the law. But in a suit, we will prevail.

Roschwalb assured her that suits will not come from anyone at the table. Sally looked very stern and said that if they are responsible, even though they may hate the law, they should point out to their members that the Feds have provided access to themselves on issues and minimized the problems on substance in their changes to the NPRM.

Roschwalb said they would go to the Hill but that the Administration can help. The associations will look at the regs carefully when published but there are very basic differences between the community and the Administration.

Terry said he had met with some very angry college presidents who were furious with the preamble language saying that part of what the regs are trying to do is reduce fraud and abuse in 2 and 4 years institutions, of which the community thinks there is too little to warrant such heavy handed regs. Sally agreed that the proprietaries are a if not the primary problem.

He went on that they were bringing up the issue before some step like a suit or Hill action because the White House had chastised the community before when the community would not support National Service because they thought it threatened Pell funding. The White House had told them never to do that again without advance warning. So this is the advance warning.

Terry recommended that the Secretary appoint a task force to come up with ways to rationalize pt. H to reduce overlap and duplication. Not all the problems are statutory. He was critical, as he had been before, of the low estimates of paperwork burden in the NPRMs.

(I don't completely understand this next section.) Sally and Dan said that the paperwork burden sections will be out again for comment. Sally said that OIRA reviews both rules and paperwork, but has statutory authority behind it on the PRA. OMB can decline to approve a requirement to collect data. The published rules will be effective except for the data collection sections. When those issues are resolved, we will publish a notice to that effect.

Next David finally clarified his position, which is a serious part of this controversy. He stated that the Department likes the law better than the community. He said no legislative action is appropriate in this session, but will work with the community on improvements, reiterating, however, that ED and the community will end up with significant differences on the law.

Sally still tried to suggest working with Congress for improvements, but I am dubious that ED will support much in the way of legislative change that will satisfy the community.

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MEMORANDUM

TO: Bill Galston

FROM: Harry McPherson

DATE: September 16, 1994

Thank you for your candor and openness about student loan consolidations. I entirely understand your view that it is consistent with the President's commitment to direct loans. Undoubtedly consolidation has the potential to benefit several million student loan borrowers, particularly those just out of college.

But in present circumstances, it also has the potential to over-tax the Department of Education's ability to process applications for direct loans, spoiling a good idea in an administrative imbroglio.

Further, unless Sallie Mae and the FFEL lenders are given the chance to offer equally attractive terms on consolidation loans, there is a distinct possibility that many more lenders than currently anticipated will sell their portfolios and get out of the business; that Sallie Mae itself will see a significant shrinking of its loan assets; that as a result, Sallie Mae will become less able to function as a servicer for DOE or as a lender of last resort (as it has just been asked to be, in Texas); and finally that its successful transition to private status will be encumbered or even jeopardized.

The administrative problem:

The DOE is gearing up to handle 5% of the student loan business, before it leaps to 40%. Start-up problems are inevitable. If in addition to processing direct loan applications from current students, DOE receives inquiries from another million or more FFEL borrowers interested in converting to direct loans, the result is certain to be confusion and delay -- affecting not only those interested in converting, but student applicants for direct loans. Politically, the message would be that the Administration promised what it could not competently deliver. That message has dogged Democratic administrations long before this one.

The FFEL lender problem:

If a significant number of FFEL borrowers refinance through the direct loan consolidation program, the financial consequences, for lenders, will be higher per-loan costs and reduced returns on their investments. The advent of direct loans has already shaken the lender community; marginal profitability will convince many nervous lenders to quit the business. That eventuality, and Sallie Mae's own depleted loan portfolio, will put even greater pressure on the government's program. Even those who look forward to a direct loan monopoly in the student market will wish to approach that goal gradually enough to do the job competently.

A modest proposal:

If the Administration chooses to proceed with a direct loan consolidation program, there is a way to reduce the risk of failure for the Administration and the potential negative implications for Sallie Mae and FFEL lenders. It is to allow FFEL lenders to offer more attractive terms on consolidation loans than they can now, by providing that the maximum interest rate on a FFEL consolidation loan would be 8.25% or the weighted average of the loans consolidated, whichever is lower. This rate would be fixed for the life of the loan. Currently, FFEL lenders must set the rate on a consolidation loan at the weighted average of the loans consolidated, rounded up to nearest whole percent. The result is that many loans are saddled with a 9% rate.

Lenders are currently forced in many cases to charge borrowers 9% on consolidation loans. By way of comparison, the government's consolidation rate is capped at 8.25%. So enactment of this amendment would allow FFEL lenders to offer borrowers a rate similar to the government's consolidation rate, and thus to protect their existing FFEL assets. This would encourage private lenders to remain in the student loan field during the transition period contemplated by the statute. All existing borrowers would benefit from potentially lower rates, and the volume of loans consolidated by FFEL lenders would reduce the administrative burdens on the newly created direct loan system, while maintaining a healthy FFEL market.

Under current interest rate assumptions, this change would not represent a scoreable future expenditure. The amendment could be attached to the Elementary and Secondary Education Act Amendments bill currently in conference.

The political results:

Enactment of this approach would have the following benefits for the Administration:

-- It increases the chance that the direct loan program will work, administratively.

-- It assures that all borrowers, including those who for personal reasons prefer to continue dealing with their local banks, will have the opportunity to consolidate their student loans on more attractive terms than they can now.

-- It makes it likely that Sallie Mae will retain sufficient assets to play the lender-of-last-resort role that Congress and the DOE wish it to play.

The only objection to it that I can imagine is that it implicitly perpetuates, at least for the next few years, the FFEL market. That objection strikes me as more ideological than practical, and I hope you will find it so as well.

We are ready to discuss the proposal at your convenience.

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF LEGISLATION AND CONGRESSIONAL AFFAIRS

Memo 1/27/95

To: Bill Galston

From: Tom Wolanin TW

Re: Sallie Mae privatization

Last night I attended a dinner for the Sallie Mae Board of Directors which was a tribute to Bill Ford, former Chairman of the Education and Labor Committee and my long-time former boss.

In the course of the reception and the dinner I had frank conversations about Sallie Mae privatization with three members of the Board - Bill Arceneaux, Chairman of the Board and the head of the Louisiana association of private colleges; Dolores Cross, President of Chicago State University; and Fred Bohen, a university administrator in New York. Arceneaux and Cross are, I believe, Clinton appointees to the Board and Bohen is one of the education representatives. These are all people I have known for many years.

I told each of them that the Administration's position with respect to privatization of Sallie Mae was that we would advocate and support privatization only insofar as it advanced the direct lending program. (I trust that this is an accurate representation of our position since this is what I have heard stated as our position at the meetings of ED, Treasury, NEC and OMB people on Sallie Mae privatization that I have attended.) I suggested to these Board members that Sallie Mae could play an important role in supporting direct loans as a servicer for example, and that Sallie Mae also has an important role in insuring the continuing smooth operation of the guaranteed loan program as it is phased out. While servicing direct loans would not be as lucrative an activity as Sallie Mae's guaranteed loan financing activities, I noted that such servicing could certainly provide Sallie Mae with a "bridge" of steady income as it found its niche in the private sector. I also suggested to them that Sallie Mae could be constructive with respect to direct loans by not attacking and undermining the program and by not giving aid and comfort to the enemies of direct lending.

I had good conversations with each of them. What surprised me, however, was that the linkage between their support for direct lending and our support for their privatization on reasonable terms was news to each of them. This suggests to me that one of three things is going on: 1.) They are all in denial - they know about this linkage but refuse to accept it. 2.) Sallie Mae management

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knows of our position but has not shared this information with the members of its Board. Or, 3.) The Administration has not articulated its position clearly and unambiguously to Sallie Mae. If we have not already done so, I think we need to make the Administration's position abundantly clear to Sallie Mae. If they had a definitive understanding of our position, my conversations with these Board members lead me to believe that Sallie Mae would be much more likely to move toward supporting direct lending in return for sympathetic action on privatization.

On a related topic, I got an e:mail from Maureen McLaughlin yesterday commenting on a conversation she had with you. You raised with her the possibility of an undesirable (from the Administration's point of view) Republican Sallie Mae privatization bill moving in the Congress. I have not heard of any such bill. Please fill me in on any details of who is drafting such a bill and which committee is considering action on it. Sallie Mae privatization legislation would be considered by Kassebaum's and Goodling's committees, and I have not heard it even suggested that this is on either of their agendas. In fact, both of them have laid out agendas - welfare reform, job training consolidation and reform, reauthorization of the arts and humanities endowments and other matters - that should take them through the next several months. I suspect that this is a ploy ginned up by Sallie Mae to try to leverage us to move our privatization legislation more quickly.

cc: Kay Casstevens
Leo Kornfeld
Mike Smith
Frank Holleman
Barry White

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. paper	re: discussion draft (36 pages)	n.d.	P5
002. letter	William Arceneaux to Frank Newman re: Sallie Mae (partial) (1 page)	03/17/1995	P6/b(6)
003. letter	William Arceneaux to Frank Newman re: Sallie Mae (partial) (1 page)	03/17/1995	P6/b(6)
004. letter	Harry McPherson to Bill Galston (2 pages)	03/17/1995	P5
005. memo	From: Pratiricia Smith re: SMLA--FYI (1 page)	04/11/1995	P5

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FOLDER TITLE:

Sallie Mae [3]

Racheal Carter
2011-0255-S
rc223

RESTRICTION CODES

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Need to add Connie Lee.

~~2:30 - Thurs next meeting~~

Do we really HAVE to put in all the "lets control Sallie Mae as if it were a bank" stuff? We're supposed to be having less regulation + this is a liquidating entity. I strongly recommend against pp 25-32.

DISCUSSION DRAFT

A BILL

To amend Part C of Title IV of the Higher Education Act of 1965 to accelerate implementation of the Federal Direct Student Loan Program and to amend Part B of Title IV of the Higher Education Act of 1965 to provide for orderly termination of the status of the Student Loan Marketing Association as a government-sponsored enterprise and its reorganization as a nonfederally-chartered business corporation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as ["The Federal Direct Student Loan Acceleration and Student Loan Marketing Association Reorganization Act of 1993.]"

SEC. 2. FINDINGS AND PURPOSE.

(a) Findings.--The Congress hereby finds that the

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implementation of the Federal Direct Student Loan Program under Part C of Title IV of the Higher Education Act of 1965 creates an environment that no longer requires federal chartering on a long-term basis of a government-sponsored enterprise to serve as a secondary market and warehousing facility for guaranteed student loans.

(b) Purpose.--It is the purpose of this Act to provide for orderly termination of the existence of the Student Loan Marketing Association (the "Association") as a government-sponsored enterprise on or before December 31, 2004, and to authorize its reorganization as a nonfederally-chartered business corporation.

SEC. 3. IMPLEMENTATION OF FEDERAL DIRECT STUDENT LOAN PROGRAM.

(a) Subsection 453(a)(2)(C) and (D) are amended to read as follows:

(C) for academic year 1996-97, loans made under this part shall represent 80 percent of the new student loan volume for such year; and

(D) for academic year 1997-98, loans made under this part shall represent 100 percent of the new student loan volume for such year.

(b) Subsection 453(a) is repealed.

SEC. 4. REORGANIZATION OF THE STUDENT LOAN MARKETING ASSOCIATION.

Part B of Title IV of the Higher Education Act is amended by adding at the end thereof the following new section:

SECTION 440. REORGANIZATION OF THE STUDENT LOAN MARKETING ASSOCIATION THROUGH FORMATION OF HOLDING COMPANY

(a) Reorganization of the Association.--

(1) Authority to Reorganize.--The Association is authorized to carry out a reorganization pursuant to a plan of reorganization which is consistent with the provisions of this section (the "Plan"). [specify 2/3ds vote of Board?]

(2) Formation of the Holding Company. The Plan shall provide for (1) the formation by the Association, under the laws of any State of the United States or the District of Columbia, of a company ("Holding Company"); (2) the formation, under the laws of any State of the United States or the District of Columbia, of a company ("Shell Corporation") which shall be a wholly owned subsidiary of the Holding Company and which shall exist temporarily solely for the purpose of carrying out a reorganization pursuant to this section; (3) the merger of Shell Corporation into the Association; and (4) the issuance of stock purchase warrants or other instruments acceptable to the Secretary of the Treasury under which the United States may participate in

COPY

the gains of the Holding Company or its security holders.

(2) Plan Approval. Upon adoption of the Plan by the Board of Directors of the Association, the Plan shall be submitted to the Secretary of the Treasury and the Secretary of Education. The Secretary of the Treasury and the Secretary of Education may require the Board to adopt such amendments as are necessary or appropriate to ensure the continued safety and soundness of the Association, consistency with the provisions of this section, and the ability of the Association to continue to fulfill the purposes for which it was formed until its dissolution.

(3) Registration Statement. After adoption by the Board of any amendments required pursuant to paragraph (2) and formation of the Holding Company as provided in the Plan, the Holding Company shall file a registration statement, which shall include a proxy statement of the Association [require compliance with securities laws for purposes of proxy] and a prospectus of the Holding Company with the Securities and Exchange Commission to (i) register, pursuant to the Securities Act of 1933, as amended [15 U.S.C. § 77a-77aa (1988)], the common stock of the Holding Company into which the common stock of the Association shall be converted at the Effective Time and (ii) to solicit the approval of the Reorganization by the Association's common stockholders.

Can't we just say comply with the securities laws?

?

COPY

(4) Stockholder Approval. After adoption of the Plan by the Board of Directors and its approval by the Secretaries of the Treasury and Education, the Plan shall be submitted to the common stockholders of the Association for their approval. The Reorganization shall occur at the Effective Time, provided that the Plan has been approved by the affirmative votes, cast in person or by proxy, of the holders of a majority of the shares of the common stock of the Association.

(5) Board Authority. The Board of Directors of the Association may take or cause to be taken all such action as is consistent with this section and as it deems necessary or appropriate to establish the Holding Company and Shell Corporation and to effect the Reorganization in accordance with this section, applicable state law, and the Plan.

(b) Effect of Reorganization.

Do we need to mandate this kind of reorg? [illegible]

(1) At the Effective Time, Shell Corporation shall be merged with and into the Association in accordance with and subject to the terms and conditions of this section and, following such merger, the Association shall be a wholly owned subsidiary of the Holding Company;

(2) At the Effective Time, each share of the Association's common stock issued and outstanding immediately prior to the Effective Time (other than shares

COPY

is this needed?

Held in the treasury of the Association) shall be converted into the right [?] to receive one share of common stock of the Holding Company and each outstanding option to purchase the Association's common stock shall be converted into the option to purchase an equal number of shares of the Holding Company's common stock:

(3) At the Effective Time, each share of Shell Corporation's common stock issued and outstanding immediately prior to the Effective Time shall be converted into one share of the Association's common stock;

(4) At the Effective Time, the separate existence of Shell Corporation shall cease:

This all seems extremely complicated

(5) At the Effective Time, each share of the Holding Company's common stock issued and outstanding immediately prior to the Effective Time shall be retired and cancelled;

[(6) At the Effective Time, all treasury shares of the Association shall be retired and cancelled.]

(7) Ownership. Immediately after the Effective Time and as a result of the Reorganization, all of the common stock of the Association shall be owned by the Holding Company. All shares of preferred stock of the Association issued and outstanding immediately prior to the Effective Time shall remain the issued and outstanding preferred stock of the Association immediately after the

COPY

Do we really want to kill the Sallie Board - esp the Pres Dir - before they dissolve? I don't think so, but I could always be wrong

Effective Time.

(8) Holding Company Board of Directors. The number and composition of the Board of Directors of the Holding Company shall be determined as set forth in the Holding Company's charter or like instrument (as amended from time to time) or by-laws (as amended from time to time) and as permissible under the laws of the jurisdiction of its incorporation. The initial Board of Directors of the Holding Company serving after the Effective Time shall be elected by the common stockholders of the Holding Company. No director of the Association that is appointed by the President pursuant to section 439(c)(1)(A)may serve as a director of the Holding Company.

[(9) Association Board of Directors. Notwithstanding any other provision of Part B of Title IV of the Higher Education Act [20 U.S.C. § 1071 et seq.], after the Effective Time, the 14 directors of the Association elected by the Association's stockholders (which immediately after the Effective Time shall be the Holding Company) shall no longer be required to meet the eligibility requirements set forth in section 439(c).]

Is this really a technical issue?

(c) Operation of Association and Holding Company During Transition.--

(1) Continuation of Rights and Duties.--Except as specifically provided herein, during the period from the

This is one reason I'm not sure we want to get rid of the Board.

Effective Time until the Dissolution Date (the "Transition Period"), the Association shall continue to have the rights, privileges, duties and obligations set forth in, and shall be subject to the limitations and restrictions of, Section 439, and the Association shall continue to carry out the purposes for which it was formed.

(2) Transfer of Property.--Except as specifically provided herein, and subject to the approval of the Secretary of the Treasury, at the Effective Time or as soon as practicable thereafter, the Association shall use its best efforts to transfer to the one or more subsidiaries of the Holding Company, as directed by the Holding Company, all real and personal property of the Association (both tangible and intangible) other than the Remaining Property. Without limiting the foregoing, such transferred property shall include all right, title and interest in (I) direct or indirect subsidiaries of the Association (excluding any interest in any government-sponsored enterprise), (ii) contracts, leases, and other agreements, (iii) licenses and other intellectual property, and (iv) any other property of the Association. Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit the Association from transferring Remaining Property from time to time to the Holding Company or its Subsidiaries, with the approval of the Secretary of the Treasury and subject to the

Is this a continuing lawsuit?

Conflict w. p 18 line 4

Treasury

COPY

I assume it is appropriate, but what's the rationale here? Can't [illegible] something having only [illegible] [illegible]

DRAFT February 10, 1995, 2:33pm

provisions of subsection (9) below.

(3) Transfer of Personnel.--At the Effective Time [and with the approval of the Secretary of the Treasury] employees of the Association shall become employees of the Holding Company (or of the Subsidiaries), except that at least one executive officer of the Association shall remain an officer solely of the Association.

(4) Management and Operational Support. The Holding Company (and/or the Subsidiaries) shall provide all necessary and appropriate management and operational (including loan servicing) support to the Association, as requested by the Association. The Association may, however, obtain such management and operational support from other persons or entities. Servicing agreements between the Association and the Holding Company or any of its Subsidiaries shall be on terms no less favorable to the Association than the Association could obtain from an unrelated third-party and shall ~~be subject to the approval~~ of the Secretary of the Treasury.

Do you really want to approve all these contracts?

the Assn [illegible] going to deal w/ this at all.

(5) Issuance of Obligations by the Association During the Transition Period.--The Association shall not issue new debt obligations after [June 30, 2000]. [Do we want a specific restriction on the ability to borrow to support assets such as the liquidity portofolio?]

I'd rather put a limit on the size of the [illegible]

Notwithstanding the foregoing, nothing in this subsection

COPY

I don't think we would want to do this. If they're not going to close until 2004 I think we should [illegible] [illegible]

440(b) shall in any way whatsoever modify the attributes accorded the debt obligations of the Association by section 439 of Part B of Title IV of the Higher Education Act [20 U.S.C. § 1087-2], regardless of whether such debt obligations are incurred prior to or at any time following the Effective Time or are transferred to a trust in accordance with subsection 440(b)(7).

(6) Limitation on Obligations Outstanding.--[During the Transition Period, the total dollar amount outstanding of obligations of the Association issued pursuant to section 439 shall not exceed the sum of (1) the total dollar amount outstanding of all obligations of the Association on the effective date of the Student Loan Marketing Association Reorganization Act of 1995 and (2) the total dollar amount of the Association's additional investments in assets permitted to be acquired under Section 439(d), (e), (o), (p) and (q) of Part B of Title IV of the Higher Education Act of 1965, as amended.] <u>or</u> [After the Effective Time, the Association shall not incur indebtedness which at any given time would exceed the aggregate book value of its assets, to the extent such assets are permitted to be held under this subsection.]

I think this is better. Why not?

(7) Restrictions on New Business Activity or Acquisition of Assets by Association. After the Effective Time, the Association shall not engage in any new business

COPY

activities or acquire any additional assets other than (i) in connection with contractual commitments for future student loan purchases or warehousing advances or pursuant to letters of credit or standby bond purchase agreements in either case which are outstanding as of E T ~~June 30, 199~~7, and (ii) in connection with its serving as a lender of last resort pursuant to section 439 of Part B of Title IV of the Higher Education Act [20 U.S.C. § 1071 et seq..].

(8) Restrictions on Transactions with Affiliates. The Association shall not extend credit to the Holding Company or any of its affiliates nor guarantee or provide any credit enhancement to any obligations of the Holding Company or any of its affiliates.

(9) Dividends. The Association may pay dividends in the form of cash [or non-cash] distributions provided the following conditions are met:

(A) at the time of the declaration of such dividends, after giving effect to the payment of such dividends as of the date of such declaration by the Board of Directors of the Association, the Association's capital would be in compliance with section 439(r) (4) [20 U.S.C. § 1087-2(r)(4)];

(B) the aggregate amount of dividends declared do not exceed--

Do you need a self-related rule as to capital position at time of ~~after~~ payment not [at] declaration

(i) for calendar year 1996, an amount equal to 40 percent of excess capital ~~of the Association~~ as ~~of the day before the Effective Time;~~

(ii) for calendar year 1997, an amount equal to 20 percent of excess capital of ~~the Association~~ as ~~of the day before the~~ Effective Time; and

(iii) for calendar years 1998 through 2000, an amount equal to 10 percent of excess capital ~~of the Association as of the day before the Effective Time~~ for each year.

Cumulat., limit to Sec 3, $1 b 100%

For purposes of this paragraph, excess capital means the Association's accumulated capital and retained earnings as of the day before the Effective Time. The Association shall certify to the Secretary of the Treasury the amount of excess capital, which shall be based upon audited financial statements of the Association as of the most recent quarter ending prior to the Effective Time.

what if they have not become after the eff time - where does that $ go? Are there any restrictions? Is it stuck until 2001?

(C) Non-cash distributions may be made only with the approval of the Secretary of the Treasury. [After the effective date of this Act, any distribution of non-cash assets by the Association to the Holding Company shall be valued at book value on the date the Association's Board of Directors approved such distribution for purposes of the distribution and

what's the diff betw a NCD + a property transfer a la pg 8 line 7?

COPY

DRAFT February 10, 1995, 2:47pm

calculating compliance with section 439(r)(4) [20 U.S.C. § 1087-2(r)(4)].

(10) Holding Company Activities.--During the Transition Period, Holding Company activities shall be limited to ownership of the Association and any other subsidiaries or other business entities that the Holding Company may form or acquire. All business activities shall be conducted through such subsidiaries or other business entities.

(11) Holding Company Name.--The names of the Holding Company, Shell Corporation, and any other direct or indirect subsidiary of the Holding Company may not contain "Student Loan Marketing Association", or "Sallie Mae", or variations thereof.

(12) Registration Statement. For the purposes of determining whether the Holding Company is a registrant entitled under 17 C.F.R. § 239.13, or any successor regulation, to use SEC Form S-3, or any successor form, for registration of its securities under the Securities Act of 1933, as amended [15 U.S.C. § 77a-77aa (1988)], the Holding Company shall be deemed to have met the conditions set forth in Instruction I(A)(3) of 17 C.F.R. §239.13.

(13) Separate Operation of Corporations.--

(A) The funds and assets of the Association shall

COPY

at all times be maintained separately from the funds and assets of the Holding Company or any of its other subsidiaries and may be used solely by the Association to carry out its purposes and to fulfill its obligations.

(B) The Association shall maintain books and records that clearly reflect the assets and liabilities of the Association, separate from the assets and liabilities of the Holding Company or any of its other subsidiaries.

(C) The Association shall maintain a corporate office that is physically separate from any office of the Holding Company or any of its subsidiaries.

(D) The Holding Company may not transfer or pledge the stock of the Association [without the prior approval of the Secretary of the Treasury.]

leave this [illegible] earlier — clear — flat prohibition

(E) The Holding Company may not cause or agree to the liquidation of the Association nor cause the Association to file a petition for bankruptcy under Title 11 of the United States Code without the prior approval of the Secretary of Education and the Secretary of the Treasury.

(F) The Secretary of the Treasury may order the Association or the Holding Company to take any action the Secretary determines to be necessary or appropriate to ensure that the corporate separateness of the Association is maintained.

(d) **Termination of Association** - The Association shall

COPY

I don't think you can make this a notice - rather than approval - process + have all the lesser stuff require approval. Conform the others with this (not the other way around)

dissolve and its separate existence shall terminate on the December 31, [2004], after discharge of its Remaining Obligations and liquidation pursuant to this subsection. The Association may dissolve pursuant to this subsection prior to December 31, [2004] by notifying the Secretary of Education of its intention to dissolve, unless within 60 days of receipt of such notice the Secretary notifies the Association that it continues to be needed to serve as a lender of last resort pursuant to section 439 (q) of the Higher Education Act [20 U.S.C. § 1087-2 (q)]. On the Dissolution Date, the Association shall take the following actions:

(A)(1) The Association shall, under the terms of an irrevocable trust agreement in form and substance satisfactory to the Secretary of the Treasury, the Association and the appointed trustee, irrevocably transfer all outstanding debt obligations of the Association to the trust and irrevocably deposit or cause to be deposited into such trust, to be held as trust funds solely for the benefit of holders of the Remaining Obligations, money or direct non-callable obligations of the United States of America or any agency thereof for which payment the full faith and credit of the United States is pledged, maturing as to principal and interest in such amounts and at such times as are determined by the Secretary of the Treasury to be sufficient without consideration of any significant

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reinvestment of such interest to pay the principal of and interest on such Remaining Obligations in accordance with their terms. To the extent the Association cannot provide obligations in the amount required, the Holding Company shall be required to transfer obligations to the trust in the amount necessary to prevent any deficiency.

(2) All money, obligations or financial assets deposited into the trust pursuant to this subsection shall be applied by the trustee to the payment of the obligations assumed by the trust. Upon the fulfillment of the trustee's obligations under the trust, any remaining assets of the trust shall be transferred to the Holding Company and/or its Subsidiaries, as directed by the Holding Company.

Only if

[Should we require the trust sooner, especially given the passive nature of SLMA after reorganization? Are we sure that the capital requirements will ensure sufficient assets in SLMA to provide cash flow to pay obligations?]

no - ? for Darcy + Jill

(2) The Association shall make proper provision [under applicable state law (which, in the absence of any other applicable law shall be deemed the District of Columbia law)?] for all other obligations of the Association (including the repurchase or redemption or the making of proper provision for the repurchase or redemption of any preferred stock of the Association then outstanding). Any

COPY

probably not - fine
DC law is crazy —
unless someone tells
us otherwise, I'd be more
inclined to use NY or Del

obligations of the Association which cannot be fully satisfied shall become obligations of the Holding Company as of the Dissolution Date.

(3) After compliance with paragraph (1) and (2) and with approval of the Secretaries of Education and Treasury, the Association shall transfer to the Holding Company and/or its Subsidiaries, as directed by the Holding Company, any remaining assets of the Association.

(h) Definitions.

For purposes of this Act -

(1) The term "Association" means the Student Loan Marketing Association;

(2) The term "Effective Time" means the effective time of the Reorganization as determined by the Board of Directors of the Association, which shall not be earlier than the date that stockholder approval is obtained pursuant to section 440 (a)(3) [20 U.S.C. § 1087-3(a)(3)] hereof and shall not be later than the date that is 18 months after the effective date of this Act;

(3) The term "Dissolution Date" shall mean December 31, [2004] or such earlier date as the Secretary of Education permits the transfer of Remaining Obligations in accordance with section 440(b)(5) [20 U.S.C. § 1087-3(b)(3)]; (4) The term Remaining Property" shall mean the following assets and

Only when serving as hedges or in general?

liabilities of the Association which are outstanding as of the Effective Time: (i) debt obligations issued by the Association, (ii) contracts relating to interest rate, currency or commodity positions or protections, (iii) investment securities owned by the Association, (iv) any instruments, assets or agreements described in section 439(d) of the Higher Education Act (including without limitation all student loans, forward purchase and lending commitments, warehousing advances, academic facilities obligations, letters of credit, standby bond purchase agreements, liquidity agreements, and student loan revenue bonds or other loans), and (v) except as specifically prohibited by this Act, any other nonmaterial assets or liabilities of the Association which the Association's Board of Directors determines to be necessary or appropriate to its operations.

Why is this "Remaining Property" any more than any contract?

is this another to keep the

Again reason to Board for Sallie existence? in a while

(5) The term "Remaining Obligations" shall mean the debt obligations of the Association outstanding as of the Dissolution Date.

(6) The term "Subsidiaries" shall mean one or

COPY

more direct or indirect subsidiaries of the Holding Company other than the Association.

SEC. 4. AMENDMENTS TO SECTION 439

(a) Sec. 439 (r) of the Higher Education Act of 1965 is amended as follows:

(1) The heading of subsection (r) is amended to read:

(r) SAFETY AND SOUNDNESS OF ASSOCIATION AND ORDERLY TRANSITION PURSUANT TO SECTION 440.

(2) Subparagraph (1) is amended to read as follows:

(1) REPORTS BY THE ASSOCIATION.--

(A) [current reporting requirement.]

(B) Within 45 days of the end of each calendar quarter, the Association shall provide to the Secretary (1) financial statements of the Association and (2) a report showing the calculation of the capital ratio in a form and containing such information as is approved by the Secretary.

(C) Unconsolidated Reporting. After the Effective Time and prior to the Dissolution Date, all reporting of the Association under this section shall be on an unconsolidated basis. [Are we overriding GAAP? Do we need to say that explicitly? Will this raise questions for Holding Company reporting, for example, under SEC requirement?]

Ck w/ SEC

Do we need to do anything to address SEC? re: that change to consolidation of the Assn (for the Assn, not the HC)

(D) Submission of Business Plan.--Within 90 days after the effective date of the Student Loan Marketing

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Association Reorganization Act of 1995, and for each year thereafter until the Dissolution Date, the Association will submit to the Secretary of the Treasury the Association's business plan addressing business, funding, investment and capitalization assumptions and plans for the Transition Period. Within 30 days of any material change in the plan or in any of the assumptions on which the plan is based, the Association shall submit to the Secretary of the Treasury an amendment to the plan reflecting any such material change.

(E) The Association shall obtain such information and make and keep such records as the Secretary of the Treasury may from time to time prescribe concerning the Association's policies, procedures, or systems for monitoring and controlling financial risk to it resulting from the activities of any of its associat~~ion~~ed persons, to the extent such activities are reasonably likely to have a material impact on the financial condition of the Association, including its capital ratio, its liquidity, or its ability to conduct and finance its operations. The term "associated person" shall mean any person other than a natural person, directly or indirectly controlling, controlled by, or under common control with the Association.

(3) Subsection (2) is amended by adding at the end a new subparagraph (D) as follows:

(2) AUDIT BY SECRETARY OF THE TREASURY.--

COPY

(D) Reimbursement for Costs of Regulation.--The Secretary may establish and collect from the Association an annual assessment in an amount sufficient to provide for reasonable costs and expenses of the Secretary to carry out the duties of the Secretary under this subsection 439(r) and section 440. [Purpose of audits may need to be expanded to cover more than financial safety and soundness.]

(4) Subsection (4) is amended to read as follows:

(4) CAPITAL STANDARD--.If the capital ratio is less than 3.0 and is greater than or equal to 2.0 percent at the end of the Association's most recent calendar quarter the Association shall, within 60 days of such occurrence, submit to the Secretary of the Treasury a capital restoration plan, in reasonable detail, that the Association believes is adequate to cause the capital ratio to equal or exceed 3.0 percent within 12 months, unless the Secretary determines that a longer period is acceptable.

(5) Subsection (5) is amended by

(1) revising subparagraph to read as follows:

"(B) If the Secretary of the Treasury does not approve a capital restoration plan as provided in subparagraph (a), then the Secretary shall notify to Association of it disapproval, stating the the reasons for disapproval, and shall provide the Association with an alternative capital restoration plan which the Association shall forthwith proceed with diligence to implement such plan."; and

(2) deleting subsection (C).

(6) Subsection (6) is amended to read as follows:

(6) SUBSTANTIAL CAPITAL RATIO REDUCTION.--

(A) ADDITIONAL PLAN REQUIRED.--If the capital ratio is less than 2.0 percent and is greater than or equal to 1.50 percent at the end of the Association's most recent calendar quarter, the Association shall submit to the Secretary of the Treasury within 60 days after such occurrence a capital restoration plan (or an appropriate modification of any plan previously submitted or adopted under paragraph (4) [or (5)] to increase promptly its capital ratio to equal or exceed 2.0 percent.

(B) If the Secretary of the Treasury does not approve a capital restoration plan as provided in subparagraph (a), then the Secretary shall notify to Association of its disapproval, stating the reasons for disapproval, and shall provide the Association with an alternative capital restoration plan which the Association shall forthwith proceed with diligence to implement.

(7) Subsection (7) is amended to read as follows:

COPY

(7) ACTIONS BY SECRETARY OF THE TREASURY.--If the capital ratio of the Association does not equal or exceed 3.0 percent at the end of the Association's most recent calendar quarter, the Secretary of the Treasury may, until the capital ratio equals or exceeds 3.0 percent take any one or more of the following actions:

(A) LIMIT INCREASE IN LIABILITIES.-- [No change]

(B) RESTRICT GROWTH.--[No change]

(C) RESTRICT DISTRIBUTIONS--[No change]

(D) REQUIRE ISSUANCE OF NEW CAPITAL.--[No change]

(E) LIMIT EXECUTIVE COMPENSATION.--[No change]

(F) REQUIRE INJECTION OF NEW CAPITAL.-- Require the Holding Company to inject additional capital into the Association.

(9) Subparagraph (8) is amended to read as follows:

(8) Critical Capital Standard.--

(A) If the capital ratio is less than 1.50 percent at the end of the Association's most recent calendar quarter and the Association has already submitted a capital restoration plan to the Secretary of the Treasury pursuant to Paragraph (4), or (6)(A) (insert "or has adopted an alternative capital restoration plan pursuant to Paragraph (5)(B) or (6)(B)"), the Association shall forthwith proceed with diligence to implement the most recently proposed plan or most recently proposed alternative restoration plan with such modifications as the Secretary of the Treasury determines are necessary to cause the capital ratio to equal or exceed 3.0 percent within 12 months unless the Secretary determines that a longer period is acceptable.

(B) If the capital ratio is less than 1.50 percent at the end of the Association's most recent calendar quarter and the Association has not submitted a capital restoration plan to the Secretary of the Treasury pursuant to paragraph (5) or (6), the Association shall--

(i) within 14 days of such occurrence submit a capital restoration plan to the Secretary of the Treasury which the Association believes is adequate to cause the capital ratio to equal or exceed 3.0 percent within 12 months unless the Secretary of the Treasury determines that a longer period is acceptable.

(ii) forthwith proceed with diligence to implement such plan with such modifications as the Secretary of the Treasury determines are necessary to cause the capital ratio to equal or exceed 3.0 percent within 12 months,

COPY

unless the Secretary of the Treasury and determines that a longer period is acceptable.

[Add authority to require liquidation]

(10) Subsection (9) is deleted.

(11) Subsection (11) is deleted.

(12) Subsection (13) is amended

(1) by adding: [Add definition dealing with how securitized assets will be treated for purposes of calculating the statutory ratio.]; and

(2) and by deleting subparagraph (C).

(13) By adding a new subsection (*) at the end as follows:

(*) Cease and Desist Authority.

(1) **Grounds for Issuance.**--The Secretary may issue and serve upon the Association, the Holding Company, or any director or executive officer thereof a notice of charges if, in the opinion of the Secretary, the Association, Holding Company, any Subsidiary [add throughout], director, or executive officer--

(A) is engaging or has engaged, or the Secretary has reasonable cause to believe that the Association, the Holding Company, director, or executive officer is about to engage, in an unsafe or unsound practice in conducting the business of the Association; or

COPY

(B) is violating or has violated, or the Secretary has reasonable cause to believe that the the Association, the Holding Company, director, or executive officer is about to violate any provision of this section or of section 440.

(2) Procedure.--

(A) Notice of Charges.--Any notice of charges shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the Association, the Holding Company, director, or executive officer.

(B) Date of Hearing.--Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or a later date is set by the Secretary at the request of any party served.

(C) Failure to Appear Constitutes Consent.--Unless the party or parties so served appear at the hearing personally or by a duly authorized representative, such party or parties shall be deemed to have consented to the issuance of the

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cease-and-desist order.

(D) Issuance of Order.--In the event of such consent, or if, upon the record made at any such hearing, the Secretary shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Secretary may issue and serve upon the Association, the Holding Company, director, or executive officer an order requiring the Association, Holding Company, director, or executive officer to cease and desist from any such violation or practice and to take affirmative action to correct the conditions resulting from any such violation or practice.

(3) Authority to Limit Activities.--The authority to issue an order under this subsection or subsection (**) includes the authority to place limitations on the activities or functions of the Association, the Holding Company, or any director or executive officer thereof.

(4) Effective Date.--A cease-and-desist order shall become effective at the expiration of 30 days after the service of such order upon the Association, the Holding Company, director, or executive officer concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective

at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Secretary or a court of competent jurisdiction.

(14) By adding a new subsection (**) as follows:

(**) TEMPORARY CEASE-AND-DESIST ORDERS.

(1) Grounds for Issuance; Scope.--Whenever the Secretary determines that any violation, threatened violation, or unsafe or unsound practice, specified in the notice of charges served upon the Association, the Holding Company, director, or executive officer pursuant to subsection (*), or the continuation thereof, is likely--

(A) to cause insolvency or significant dissipation of assets or earnings of the Association, or

(B) to weaken the condition of the Association prior to the completion of the proceedings conducted pursuant to subsection (*),

the Secretary may issue a temporary order requiring the Association, or any director or executive officer thereof, to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, or condition pending completion of such proceedings.

(2) Effective Date.--An order issued pursuant to

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paragraph (1) shall become effective upon service upon the Association, Holding Company, director, or executive officer and, unless set aside, limited, or suspended by a court in proceedings authorized by subsection (?), shall remain effective and enforceable pending the completion of the proceedings pursuant to such notice and shall remain effective until such time as the Secretary dismisses the charges specified in such notice or until superseded by a cease-and-desist order issued pursuant to subsection (*).

(3) Incomplete or Inaccurate Records.--

(A) Temporary Order.--If a notice of charges served under subsection (*) specifies that the Association's books and records are so incomplete or inaccurate that the Secretary is unable, through the normal supervisory process, to determine the financial condition of that enterprise or the details or the purpose of any transaction or transactions that may have a material effect on the financial condition of that enterprise, the Secretary may issue a temporary order requiring--

a. the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

b. affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (*).

(B) Effective Period.--Any temporary order issued under subparagraph (A)--

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under subsection (d), shall remain in effect and enforceable until the earlier of--

(1) the completion of the proceeding initiated under subsection (*) in connection with the notice of charges; or

(2) the date the Secretary determines, by examination or otherwise, that the enterprise's books and records are accurate and reflect the financial condition of the Association.

(4) Judicial review.--Within 10 days after the Association, the Holding Company, director, or executive officer has been served with a temporary cease-and-desist order pursuant to this section, the Association, or any director or executive officer thereof, may apply to the United States district court for the judicial district in which the home office of the Association is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the

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enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the enterprise, director, or executive officer under section 141(a), and such court shall have jurisdiction to issue such injunction.

(5) Enforcement.--In the case of violation or threatened violation of, or failure to obey, a temporary order issued pursuant to this section, the Secretary may, with the prior consent of the Attorney General and subject to the Attorney General's direction and control, apply to the United States district court for the judicial district in which the home office of the Association is located, or the United States District Court for the District of Columbia for an injunction to enforce such order, and, if the court finds any such violation, threatened violation, or failure to obey, it shall issue such injunction.

(b) Section 439 of the Higher Education Act of 1965 (20 U.S.C. 1001 _et_ _seq_., hereinafter referred to as "the Act") is amended--

(1) in subsection (q) --

(A) in paragraph (1) (b), by striking out "to this subsection" and "paragraph (2) (A) of this subsection" and inserting in lieu thereof "to this paragraph" and "subparagraph (B) (i) of this paragraph," respectively;

(B) by redesignating paragraph (1), and subparagraphs (A) and (B) thereof, as subparagraph (A), and clauses (i) and (ii) thereof, respectively;

(B) by redesignating paragraph (2), and subparagraphs (A) and (B) thereof, as subparagraph (B), and clauses (i) and (ii) thereof, respectively;

(C) by redesignating paragraph (3) as subparagraph (C);

(D) by inserting immediately after subsection heading the following: "(1) LENDER-OF-LAST-RESORT LOANS MADE BY THE ASSOCIATION FROM ITS OWN FUNDS.--;" and

(E) by adding at the end thereof the following new paragraph:

"(2) ADVANCES TO THE ASSOCIATION FOR LENDER-OF-LAST-RESORT SERVICES.--(A) (i) In order to ensure the availability of loan capital during the transition from the Federal Family Education Loan Program under this part to the William D. Ford Federal Direct Student Loan Program under part D of this title, the Secretary is authorized to provide the Association with advance funds, with such restrictions on the use of such funds (including conditions relating to the time or times of repayment) as are determined appropriate by the Secretary, to enable the Association to make loans as the lender-of-last-resort whenever the Secretary determines that eligible borrowers are seeking and are unable to obtain loans under this part.

Why do we need this? Didn't last year's take care of it? What's the scoring?

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(ii) Notwithstanding any other provision of law, the Secretary may provide such advances to the Association without regard to the availability of a lender-of-last-resort program of a guaranty agency operating in that State.

(iii) The association shall make such loans in accordance with this subsection and the requirements of the Secretary. The Secretary may require that the Association make loans to borrowers within a geographic area or for the benefit of students attending institutions of higher education that certify, in accordance with standards established by the Secretary, that their students are seeking and unable to obtain loans.

(iv) Notwithstanding any other provision in this part, the Association shall be required to pay to the Secretary, at such intervals as the Secretary may specify, interest on the funds advanced pursuant to this paragraph in an amount equal to the interest paid by the borrowers of loans made pursuant to this paragraph.

"(B) Loans made pursuant to this paragraph shall be insurable by the Secretary under section 429 with a certificate of comprehensive insurance coverage provided for under section 429 (b) (1).

"(C) Notwistanding any other provision in this part, the Secretary shall pay the Association a fee, in an amount established by the Secretary, for making such lender-of-last-resort loans in lieu of interest and special allowance subsidies, and the Association shall assign such loans to the Secretary on demand. Upon such assignment, the portion of the advance represented by the loans assigned shall be considered repaid by the Association.

"(D) The Secretary may make the advances and pay the fees described in this paragraph from funds available under this part or under section 458 of the Act."

(2) by redesignating subsections (r) and (s) as subsections (t) and (u), respectively; and

(3) by inserting immediately after subsection (q) the following new subsections:

"(r) ADVANCES TO THE ASSOCIATION FOR LOAN PURCHASES.--(1) Whenever the Secretary determines that it is necessary to the successful transition from the Federal Family Education Loan Program under this part to the William D. Ford Federal Direct Student Loan Program under part D of this title, the Secretary is authorized to provide the Association with advance funds, which the Association shall use to purchase loans made under this part that are insured by a guaranty agency.

"(2) Loans purchased pursuant to this subsection shall be insurable by the Secretary under section 429, with a certificate of comprehensive insurance coverage provided for under section 429 (b) (1), in lieu of the insurance provided by a guaranty agency prior to such purchase.

"(3) Notwithstanding any other provision in this part, the Association shall be required to pay to the Secretary, at such intervals as the Secretary may specify, interest on the funds advanced pursuant to this subsection in an amount equal to the interest paid by the borrowers of loans made pursuant to this subsection.

"(4) Notwithstanding any other provision in this part, the Secretary shall pay the Association a fee, in an amount established by the Secretary, in lieu of interest and special allowance subsidies on the loans purchased under this subsection, and the Association shall assign such loans to the Secretary on demand. Upon such assignment, the portion of the advance represented by the loans assigned shall be considered repaid by the Association.

"(5) The Secretary may make the advances and pay the fees described in this subsection from funds available under this part or under section 458 of the Act."

(c) Part B of Title IV of the Act is further amended by adding at the end thereof the following new section:

"SEC. 441. (a) ADVANCES AUTHORIZED; PURPOSES.--The Secretary is authorized to make advances to one or more secondary markets described in subsection (b) from funds specified in subsection (c) to enable such secondary market to--

"(1) make loans as the lender-of-last-resort on terms consistent with the provisions in section 439 (q) (2) (including fees in lieu of interest and special allowances subsidies, and

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assignment on demand) regarding lender-of-last-resort loans by the Student Loan Marketing Association; or

"(2) purchase loans made under this part that are insured by a guaranty agency on terms consistent with the provisions in section 439 (r) (including fees in lieu of interest and special allowance subsidies, and assignment on demand) regarding such purchases by the Student Loan Marketing Association.

"(b) ELIGIBLE SECONDARY MARKET.--In order to be eligible to receive advances under this section, a secondary market must meet the definition of an eligible lender in Section 435 (d) and such other eligibility criteria as the Secretary may specify.

"(c)" SOURCES OF ADVANCE FUNDS.--The Secretary may make the advances and pay the fees described in this section from funds available under this part or under section 458 of the Act."

SEC. 5. REPEAL OF SECTION 439

Section 439 of Part B of Title IV of the Higher Education Act shall be repealed as of the Dissolution Date.

SEC. 6. EFFECTIVE DATE.

Except as otherwise indicated herein, the amendments made by this Act shall take effect on [__________].

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

11-Apr-1995 06:07pm

TO: (See Below)

FROM: Patricia A. Smith
Office of Mgmt and Budget, LVE

SUBJECT: SLMA -- FYI

Mike Burton from Jack Quinn's staff in the VP's office called Barry White this morning, having been referred by Apfel. SLMA has retained Skadden, Arps to raise the issue of the SLMA "offset fee" and securitization to the VP's office. ED's lawyers have communicated to SLMA that SLMA's securitization is not sufficient to relieve SLMA of the requirement the pay the offset fee. Barry says that Burton had evidently been told by Skadden, Arps that this is part of some punitive action by ED that is counter to some larger public policy. Barry explained to Burton that the Administration policy is just to keep the privatization of SLMA PAYGO neutral.

Arceneaux (SLMA's board chair) and probably Hough will meet with Riley tomorrow afternoon on the securitization issue. SLMA staff have told us that this meeting is to tell ED that SLMA will bring legal action against ED on the issue of ED's requiring them to pay the offset fee on securitized loans.

Today the Wall St. Journal ran an article about dissident SLMA shareholders filing a preliminary proxy statement seeking to nominate a minority slate of four directors to the SLMA board. The next board mtg is scheduled for May 25, 1995. "Analysts and investors say a key goal of the dissidents to lobby against privatization of SLMA...The solicitation apparently has the support of one large institutional shareholder." Two of the four directors being proposed are former SLMA executives, Al Lord and Ron Hunt.

SLMA has agreed to send Treasury a copy of the proxy statement tomorrow. SLMA issued a press release on the subject yesterday.

Off the record, SLMA staff say that the dissidents want SLMA to fight direct lending hard, and if they lose, liquidate the company, not privatize.

Distribution: