The Tools of Government

JOHNS HOPKINS UNIVERSITY CENTER FOR CIVIL SOCIETY STUDIES

WORKBOOK #5

Government Corporations & Government Sponsored Enterprises

By Thomas H. Stanton

Government Corporations and Government Sponsored Enterprises Workbook

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Overview

This workbook is a companion to *The Tools of Government: A Guide to the New Governance,* edited by Lester M. Salamon. It includes original source documents that illustrate the operation of a government program that provides public services through a government corporation or a government sponsored enterprise as a tool of government. It is designed to help the reader better understand the process for (1) creating and managing a government corporation and (2) creating and supervising a government sponsored enterprise.

The wholly owned government corporation: A government corporation is a government agency, owned and controlled by government, which is set up as a separate corporate entity legally distinct from the rest of the government of which it is a part. This form is often used for activities that are expected to be revenue producing and potentially self-sustaining; however, this need not be the case. Government corporations can provide any of a number of products or services, ranging from postal service to power generation to financial services.

The government sponsored enterprise (GSE): The government sponsored enterprise, as distinct from the wholly owned government corporation, is a government chartered, privately owned, and privately controlled institution that, while lacking an express government guarantee of its financial obligations, benefits from the perception that the government stands behind its financial obligations. In return for statutory privileges, including tax benefits and regulatory exemptions as well as reduced borrowing costs, the GSE is confined by its charter to serving specified market segments through a limited range of services. GSEs in the United States typically provide financial services such as purchasing and funding home mortgages, student loans, or agricultural mortgages.

This workbook addresses the mechanics of government corporations and government sponsored enterprises. This entails:

- Identifying the public purposes to be served and the functions involved;

- Determining the profitability of these functions;
  - If they are financially self-sustaining or potentially self-sustaining, consider creating a wholly owned government corporation;
  - If they involve overcoming a market imperfection and are profitable, consider creating a government sponsored enterprise or competing GSEs;
  - If they do not involve overcoming a market imperfection, consider privatizing the activity completely;

- If some functions are not financially self-sustaining or profitable, determine how they will be paid for;

- Enacting a sound corporation charter for a federal government corporation;
  - Establish the corporation as a wholly owned government corporation within the Government Corporation Control Act;
  - Determine its organizational location or whether it will be an independent agency;
  - Provide for periodic reauthorization and review whether privatization might be appropriate.

- Enacting a sound corporation charter for a GSE;
  - Authorize a safety-and-soundness regulator to oversee the GSE with the powers and mandate of a federal bank regulator;
  - Determine the congressional committees and executive branch agencies that will have oversight responsibility for the GSE (1) with respect to financial safety and soundness, and (2) continuing service to a significant public purpose;
  - Provide for an exit strategy so that the GSE can become a completely private company, without special ties to the government, after a fixed period of time; or include a ten-year sunset provision in the charter and authority for the Secretary of the Treasury, or other financially capable official, to oversee the transition from GSE status;

- Selecting the initial corporate leadership;
  - For a government corporation, appoint a chief executive and other officials as may be prescribed by the charter;
  - For a GSE, create or approve an interim board of directors to sell stock in the GSE(s) and issue debt obligations;

- Providing for initial funding;
  - For a government corporation, provide for an appropriation to fund the first year of operations of the corporation (this initial funding may be structured as a loan or as an initial government investment in the corporation);
  - For a GSE, sell stock in the GSE(s), either to investors or to cooperative owners. When the stock is issued for each GSE, holding an election for the first members of the board of directors; the directors will select the corporate leadership; and

- Beginning operations.

The language of the charter legislation and ancillary legislation is often complex and difficult to understand, but it is critical. The legislation provides for the authority of the corporation to carry out its intended activities, provides for benefits that the institution will enjoy, and establishes the responsibilities of the institution. Institution-building involves careful attention to fundamental issues such as (1) capacity and flexibility to carry out its public mission, (2) accountability of the institution, and (3) the intended life-cycle of the institution.

Document Listing and Description

This section of the workbook is divided into two parts: **(1) wholly owned government corporations** and **(2) government sponsored enterprises (GSEs)**. The government corporations part contains 13 documents. Most of these relate to the St. Lawrence Seaway Development Corporation (SLSDC), a government corporation that is part of the U.S. Department of Transportation. The section on GSEs contains seven additional documents. Most of these relate to Sallie Mae, the Student Loan Marketing Association, a GSE that purchases and funds student loans.

The documents in each part are grouped into four categories. This section lists the documents and then briefly describes each set.

Part 1 – Government Corporation: St. Lawrence Seaway Development Corporation

A. Overview of the Government Corporation as an Organizational Form

1. Office of Management and Budget, *Memorandum for Heads of Executive Departments and Agencies: Government Corporations.* M-96-05. Washington, DC, December 8, 1995
2. Congressional Research Service, "Federal Government Corporations: An Overview," by Ronald C. Moe, Washington, DC, November 24, 1998.
3. S. 2095, the "Government Corporation and Government Sponsored Enterprise Standards Act," [not enacted into law]

The government creates government corporations to carry out activities that have a public purpose, are business-like in nature, and are financially self-sustaining or potentially self-sustaining. The first document (A1) is a statement of the views of the Office of Management and Budget about when it is appropriate to create a wholly owned government corporation. The second document (A2) provides an overview of government corporations in the United States, including their uses and structure.

S. 2095, the "Government Corporation and Government Sponsored Enterprise Standards Act," (A3) was a bill introduced in the Senate in 1996 but not enacted. This bill, especially in Sections 301-312, provides a useful template for provisions of a corporation charter that can provide for capacity, flexibility, and accountability.

B. Background and Authorizing Statutes

1. St. Lawrence Seaway Development Corporation, "A History of the Great Lakes Seaway System" (http://www.seaway.dot.gov/about/exthist.html)
2. Government Corporation Control Act, 31 U.S. Code Chapter 91 (http://law2.house.gov/uscode)
3. St. Lawrence Seaway Development Corporation Act, 33 U.S. Code Chapter 19 (http://law2.house.gov/uscode)

Each proposed government corporation must be fitted to the particular public purposes that it is intended to serve. Usually it is appropriate to conduct a study of the existing program or functions and the range of possible organizational alternatives. The history of the St. Lawrence Seaway (B1) shows how the U.S. created this government corporation in response to a Canadian initiative to create a Crown Corporation, known as the Seaway Authority, so that the two countries would share in the revenues and control of this important waterway.

The Government Corporation Control Act (B2) is a law that governs most wholly owned government corporations. Most importantly, this act provides, that government corporations shall submit business-type budgets.

The government establishes a wholly owned government corporation through a special kind of authorizing legislation that is sometimes called a corporation charter (B3). The legislation establishes the corporation, specifies where the corporation shall be located (either within a cabinet department or independently), the relationship of the corporation to its department and its degree of autonomy, the corporation's powers and authorized activities, and elements of its structure.

The charter act of the corporation, the St. Lawrence Seaway Act (B3), contains many of the features that are most important to assure a successful government corporation, with attention to the relationship between the corporation and the parent Department of Transportation and the capacity of the corporation to carry out its mission.

C. Capacity and Flexibility

1. U.S. General Accounting Office, Decision of the Comptroller General of the United States in the Matter of St. Lawrence Seaway Development Corporation, B-193573, December 19, 1979
2. U.S. Department of Housing and Urban Development, Opinion of the General Counsel, "Ginnie Mae Authority for Refreshments at Conference," March 20, 2001
3. President's budget proposal for SLSDC for 2002

The Government Accounting Offce (GAO) may rule on the applicability and effect of provisions in a corporation charter. Sometimes very obscure provisions can have significant effects. For example, the GAO has ruled on authority to determine the character and necessity of its expenditures without regard to laws other than those that apply to government corporations (C1). That language frees a government corporation from the constraints of many of the appropriations laws.

Item C2 is another legal opinion about budget flexibility. In March of 2001, the HUD General Counsel confirmed similar budget authority for another wholly owned government corporation, Ginnie Mae.

Item C3 is an excerpt from the President's budget recommendation for the Department of Transportation. In contrast to the concept of a government corporation as funding itself from its own revenues, in this case an adequate appropriation is key to assuring the fiscal capacity to achieve the purposes of the corporation.

A corporation charter needs to assure that the corporation has the capacity and flexibility to carry out its mission. The St. Lawrence Seaway Corporation Act (B3) contains a fairly good set of corporation powers in Section 984.

In addition, one provision of the Government Corporation Control Act, 31 U.S. Code §9105 (B2), prescribes that a wholly owned government corporation shall submit a business type budget to the Office of Management and Budget and then to the Congress. The business-type budget is a more flexible form of budgeting than is available to government departments and agencies that are not government corporations.

D. Accountability

1. St. Lawrence Seaway Development Corporation, Annual Report for FY 1999
2. U.S. General Accounting Office, Decision of the Comptroller General, B-278820, February 10, 1998 Sunset Provision, 12 U.S. Code Section 635f, excerpted from the Export-Import Bank Act of 1934 (http://law2.house.gov/uscode-)
3. Export-Import Bank of the United States, news release, "Reauthorization Facts," November 6, 1998

The annual report of the St. Lawrence Seaway Development Corporation (D1) gives a good overview of the corporation and its activities and financial circumstances. It is an important accountability document.

The Comptroller General of the United States, head of the U.S. General Accounting Office (GAO), reviews government actions to assure, among other things, that they are carried out in accordance with law. The law requires that there be an express statute authorizing creation of each government corporation. If a government official or agency tries to create a government corporation without proper statutory authority, the GAO will rule on that action (D2).

One approach to accountability suggested by S. 2095 (A3, section 303) is to insert a sunset provision into each government corporation charter. This approach creates an opportunity to change the charter or the status of the corporation. The Export Import Bank of the United States (ExImBank), a government corporation, is governed by a law that the Congress reauthorizes every three years (D3 and D4). However, the three-year reauthorization process does not serve as the focus for consideration of a sunset. It is likely that a provision should have a longer time horizon, say, ten years, if it is to prompt consideration of the possibility of actually sunsetting a government corporation.

The St. Lawrence Seaway Development Corporation Act (B3) includes a number of provisions that provide for accountability of the corporation to the U.S. Department of Transportation and to Congress. Ultimately, the Congress can hold any corporation accountable through its legislative and budgetary authority.

S. 2095, the “Government Corporation and Government Sponsored Enterprise Standards Act,” (A4) includes several accountability provisions such as the concept of a transitional government corporation. A government corporation may provide a good transitional structure for a government program or activity that policymakers may want to privatize.

Part 2 – A Government Sponsored Enterprise: Student Loan Marketing Association

A. *Overview of the Government Sponsored Enterprise as an Organizational Form*

1. Congressional Budget Office, *Assessing the Public Costs and Benefits of Fannie Mae and Freddie Mac*, May 1996 [excerpts]

The Congressional Budget Office conducted a study of the two largest GSEs, Fannie Mae and Freddie Mac, and their public benefits and public costs (A1). These benefit-cost issues have not been as salient for Sallie Mae since 1996, when the GSE worked with the Congress to enact legislation to give up its GSE status over a multi-year transition period. However, questions of public benefits and public costs remain important for the other GSEs and for the GSE as an organizational form.

The Office of Management and Budget (A1 Appendix I in Government Corporations section) has set forth some principles with respect to the creation and purposes of GSEs. Also see A3 in the Government Corporations section for other overview information.

B. Overview of Sallie Mae

1. Office of Management and Budget, "Budget of the United States Government: FY 2002," *Analytical Perspectives* [excerpts] (http://www.whitehouse.gov/omb/budget/fy2002/spec.pdf)
2. SLM Holding Company, 10K Report for 1997 [excerpts] (http://www.sec.gov/Archives/edgar/data/1032033/0001024739-98-000335.txt)
3. SLM Holding Company, 10K Report for 2000 [excerpts] (http://www.sec.gov/Archives/edgar/data/1032033/000092838501500211/0000928385-01-500211.txt)

Congress chartered Sallie Mae in 1972 to purchase student loans. At the time, the federally guaranteed student loan was a new instrument that was unfamiliar to many private lenders. Sallie Mae could provide a secondary market to buy those loans from banks and thereby make it easier for banks to participate in the guaranteed loan program. The Office of Management and Budget gives a brief description of the role of Sallie Mae in the student loan market in 2001 (B1). Sallie Mae remains by far the largest holder of student loans.

The SLM Holding Company came into existence after the 1996 legislation to remove government sponsorship from Sallie Mae. The 10K reports that the company filed with the Securities and Exchange Commission for 1997 and 2000 (B2 and B3) provide a good snapshot of the GSE as it began to change its structure.

C. Authorizing Legislation

1. Student Loan Marketing Association Charter Act, 20 U.S. Code Section 1087 (http://law2.house.gov/uscode)

The government establishes a GSE through authorizing legislation. The legislation usually is fairly complicated, especially as it evolves over time. The Sallie Mae Charter Act (C1) authorizes establishment of the corporation, prescribes its governance structure, sets forth its authorized powers, provides for regulatory and tax benefits, and creates some form of government oversight. The Sallie Mae Charter Act also sets forth the transition of the GSE to give up its government sponsorship.

D. Ending Government Sponsorship of a GSE

1. Testimony of the Department of the Treasury before a House subcommittee hearing on privatization of Sallie Mae, May 3, 1995 S*tudies on Privatizing Fannie Mae and Freddie Mac*, 1996 [not included. see link below.] (http://www.sec.gov/Archives/edgar/data/1032033/000092838501500211/0000928385-01-500211.txt)

Congress held extensive hearings prior to deciding to privatize Sallie Mae. Item D1 is the testimony provided by the Department of Treasury explaining the rationale for its recommendation for privatization.

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Sallie Mae is the first GSE to work with the Congress and Administration to design an exit strategy for giving up government sponsorship. The Sallie Mae Charter Act (C1, at subsection 1087-2(s), titled "Charter sunset") contains provisions that were added in 1996 to address the transition. Sallie Mae sought privatization in part because the Congress earlier had added an "offset fee" in subsection 1087-2 (h)(7) that offsets much of the company's advantages as a GSE when it holds student loans.

For those who prefer a visual image, a diagram from another government-commissioned study concerning Fannie Mae and Freddie Mac (Item D1) shows a three-step process for moving from (1) a stand-alone GSE to (2) a holding company structure, with both a GSE and new non-GSE operating companies, and then (3) to a complete wind-up of the GSE.

Section 2095, the "Government Corporation and Government Sponsored Enterprise Standards Act," (A3 in Government Corporations section, Section 502) provides a template for including a sunset provision in the charter of a GSE as one way to prompt periodic consideration of the desirability of removing government sponsorship from a GSE.

The 10K reports of USA Education, Inc., the successor company to SLM Holding (which in turn was the successor to Sallie Mae, the GSE), provide an optimistic outlook for the transition from government sponsorship (B2 and B3). Freed from the constraints of the GSE charter, Sallie Mae's one-time managers, in their new role as managers of the parent holding company have acquired several student loan firms to complement their own existing business. The Sallie Mae website (www.salliemae.com) reveals a broad range of services and products for sale through financial partners.

Part 1

Government Corporation:
St. Lawrence Seaway Development Corporation

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

December 8, 1995

M-96-05

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Alice M. Rivlin AR

SUBJECT Government Corporations

The drive to create a government that works better and costs less has generated increased interest in the creation of new entities. For example, the Administration has supported the transformation of agencies that have a clear measure of performance into "Performance-Based Organizations" with flexibility, where necessary, in human resources management, budget, procurement, and other administrative functions. Such organizations will generally continue to operate within their present agency and will be led by executives operating under term, performance-based contracts. You will hear more about these organizations in the year ahead.

The use of a more traditional government corporation may be indicated when an entity is revenue producing and potentially self-sustaining, and involves a large number of business-type transactions with the public. Such revenue producing and self-sustaining enterprises, to operate most effectively and efficiently, may need, in lieu of normal input controls, a different form of fiscal and program accountability adapted to their unique requirements.

The concept of a government corporation has been applied inconsistently in the past. Some entities are government corporations without being designated as such. Other entities are called government corporations without having many of the essential characteristics. Many "revolving funds" have similar characteristics regardless of whether they are designated as "government corporations." The challenge involved in designing government corporations is to the balance need for autonomy and flexibility with the need for accountability and oversight. If the decision is made to create a government corporation, the goal should be to provide an operational structure that allows Federal entities to carry out their functions in the most effective and efficient manner, and in a way that maintains accountability to decision makers.

The attached *"Specifications for Creating Government Corporations"* provide a set of issues and presumptions to be considered when analyzing whether programs would benefit from the operating and financial flexibility and other normal attributes of a government corporation. Though the specifications provide an overall analytic framework, the suitability and form of alternative forms of fiscal and performance accountability should be considered on a case-by-case basis to meet the specific needs of the entity.

Attachment

SPECIFICATIONS FOR CREATING GOVERNMENT CORPORATIONS
December, 1995

I. Purpose

A. This outline provides an analytic framework of policy presumptions and questions to be asked when an agency or function proposes to form a government corporation.

B. The analytic framework should be used when a public businesslike function, which requests to become a government corporation, asserts a *prima facie* case that it cannot operate more effectively or more efficiently without changing its organizational structure.

C. Though the specifications provide an overall analytic framework, the suitability and form of alternative models of fiscal and programmatic accountability must be considered on a case-by-case basis to meet the specific needs of the entity.

II. Introduction

A. The Administration considers it important to transform agencies or operations that have a clear measure of performance into "performance-based organizations," and those that are self-supporting (or potentially so) through their own revenues into government corporations. [1]

B. The goal is to provide an operational structure that allows Federal

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[1] The President's Management Council is looking at the concept and opportunity to transform agencies that have a clear measure of performance into "performance-based organizations." The Administration will consider providing performance based organizations flexibility to adopt different forms of fiscal and program accountability, where necessary to operate most effectively and efficiently. That might mean, for example, alternative systems for human resources management, budget, procurement, and other administrative functions, in lieu of current "input" controls. A major difference from a corporation (which should be revenue producing and self-sustaining) would be that a performance-base organization would be headed by an executive employed under a 5-year performance contract.

entities to carry out their functions in the most effective and efficient manner, and in a way that maintains accountability to decision makers, while minimizing Federal exposure to loss.

C. A first-order question is to determine whether the Government should perform this function at all. [2]

D. The Federal Government should limit or focus its operations to those functions:

1. Not performed by the private sector;
2. More appropriately performed by government;
3. That continue to demonstrate that performance by government is in the best interests of the taxpayer; and
4. So necessary to the national welfare that continuation of a core capacity must be assured even though the function also may be performed by the private sector.

E. The possibility should be considered of moving operations (in whole or in part) that can sell goods or services on a self-sustaining basis into the private sector.

F. If a public purpose discourages privatization, it should be recognized that creating a government corporation under the Government Corporation Control Act does not, by itself, guarantee efficiency or accountability.

G. It should be also recognized that the concept of a government corporation has been applied inconsistently in the past. Some entities are government corporations without being designated as such. Other entities are called government corporations without having

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[2] This is not a rhetorical question. In keeping with the Administration's reinvention effort and the current budgetary realities, the Government should perform a function only if it involves an important public purpose that Government can best serve.

many of the essential characteristics.[3] Many "revolving funds" have some similar characteristics regardless of whether they are designated as "government corporations." A few entities classified as government corporations under the Government Corporation Control Act are not part of the Federal Government.

III. First Step in the Analysis - Is this a businesslike enterprise?

A. If the answers to the following questions are negative, the entity should be dropped from further consideration under this analytic framework. If the answers to the questions are affirmative, the businesslike entity should next be considered for privatization. In cases where the answers are mixed, judgements should be made on a case-by-case basis.

B. Is this an operation that is, or could be, predominantly of a businesslike character -- that is, does it act like a private business or what we would think of as a private corporation?

1. Does the enterprise deal with the public as a businessman, insurer, or banker, and not as a sovereign?
2. Is its primary purpose to sell goods and services to the public (rather than regulate, make grants, or provide goods and services to the public without a price)?
3. Does it have customers (*i.e.*, individuals or organizations who freely choose to purchase the product or service)?
4. Is it, or could it be, substantially self-financing (*i.e.*, does the income generated from selling the product or service cover operating expenses and the cost of capital)?
5. Is there likely to be continued demand for its goods and services over a long period?

IV. Second step in the analysis - Why not privatize?

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[3] The Department of Defense has some nonappropriated fund activities, such as the Army and Air Force Exchange Service, that also have characteristics of government corporations.

A. If the answers to questions B, C, D, and E below are negative, the businesslike enterprise should become a private corporation with no Federal control or backing. (In the event the entity is privatized, provision should be made for the entity to reimburse the Government for its investment in the enterprise in accordance with Federal financial policies.) If the answers are in the affirmative, move to the next step of the analysis.

B. Are there good and sound reasons this entity cannot compete in the private sector? (For example, if the private sector does not produce these or similar services, would that still be the case if Government intervention is removed?)

C. Are there market impediments that could make privatization inappropriate?

1. Absence or imperfection of a viable market?
2. Need to protect or continue service to "unprofitable" segment of market (*i.e.*, would there be an inclination to service less than the entire market, or need for/desirability for cross-subsidization)?
3. Regulatory/safety or other public function that is intrinsic to the entity's operation and cannot be separated from its commercial aspects and carried out by a separate governmental entity? [4]

D. Does the entity serve primarily public policy as opposed to private purposes?

E. If it failed, would the Government feel obliged to bail-out the entity to maintain the provision of a public policy or for some other reasons?

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[4] Regulatory functions are not normal, businesslike activities, since they involve the exercise of inherently governmental (sovereign) powers. Consequently, regulatory functions should be separated from the entity's businesslike functions and carried out by a separate governmental entity.

V. <u>Third step in the analysis - Should the entity become a government corporation?</u>

A. The legal and financial powers of a corporation do <u>not</u> themselves justify the corporate form; they are a means, not an end in and of themselves.

B. While a governmental corporation by itself does not guarantee efficiency or accountability, neither does a traditional agency. However, the fiscal and performance demanded of a self-sustaining entity often leads to the development of a "competitive tone" that may be absent in other agencies.

C. The businesslike enterprise should make a "presentation" to OMB that explains the benefit of incorporating the operation, addresses the need for each element or feature of incorporation, justifies the removal of each statutory constraint, and explains why alternatives are not an equal (if not superior) way to achieve more efficient or effective operations.

D. Key factors agencies should consider in such analysis are whether the enterprise:

1. Is sufficiently businesslike,
2. Cannot privatize immediately, and
3. Would function better as a corporation than under other alternatives (e.g., removing specific constraints, financing and operating as a franchising or revolving fund, or using service contracts).

E. These questions are intended to insure that appropriate analysis and consideration are given to the most obvious, relevant, and practical alternatives to becoming a government corporation.

F. Assuming an entity's operations are needed and are sufficiently businesslike (first step in the analysis) and not suitable for immediate privatization (second step in the analysis), and the entity makes a compelling programmatic presentation, there are two primary reasons to form a corporation:

1. As a transitional state, pending private ownership, or
2. When the programmatic or fiscal performance of the entity would benefit from the distinct legal identity accompanying incorporation.

VI. Mandatory disclosure and control.

Government corporations should be subject to the provisions of the Government Corporation Control Act (31 USC 91). [5]

VII. Autonomy and flexibility.

A. A government corporation should not be established merely as a convenient way to escape legitimate discipline and proper executive controls.

B. However, revenue-producing and self-sustaining corporations are different from agencies financed primarily with annual appropriations and often cannot function effectively if subject to controls designed for programs financed by annual appropriations. In such circumstances, alternative systems of control and accountability should be considered, adapted to the entity's unique requirements.

C. The Administration will consider providing corporations flexibility in human resources management, budget, procurement, and other administrative functions.

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[5] The Government Corporation Control Act provides specialized budgetary reporting requirements, which are in addition to the reporting required of other Federal entities. Specifically, GCCA requires wholly-owned government corporations to prepare and submit business-type budgets to the President each year. The Act also imposes certain audit and reporting requirements on both wholly-owned and mixed-ownership government corporations.

D. To the extent an entity proposes exemptions or flexibility from controls designed for programs financed by annual appropriations, it should describe in detail its proposed alternative management systems (e.g., human resources management, budget, procurement, and other administrative functions) in terms of its programmatic goals, addressing how these alternative systems will improve efficiency and performance.

VIII. Corporate "bottom line."

A. Government corporations should be accountable for results that focus on programmatic outputs and outcomes. [6]

B. The corporation should be formed with a "charter" that spells out the scope of its activities to assure that government corporations are established and conduct their operations so as to be fully accountable for their financial soundness and programmatic activities. Corporations should be created with strategic goals and defined objectives (what the corporation should do) that will enable the Secretary and the Congress to judge how well the corporation is performing, including:

1. Program measures,
2. Financial measures, and
3. Specific actions if goals are not met.

C. The Secretary (and OMB) should focus on strategic priorities rather than intervention in a corporation's day-to-day operations.

IX. Other standards for a businesslike entity that propose to become a government corporation.

A. Generally-applicable laws. A corporation which seeks exemption from generally-applicable statutory requirements must make a

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[6] Consistent with the Government Performance and Results Act, results should, to the extent appropriate, focus on *outcomes*.

specific case, tied to the nature of its business. Absent specific, compelling reasons, a government corporation will be subject to generally applicable statutes.

B. Budget and Credit Standards.

1. Budget requirements in Title 31. All government corporations should be included in the Federal Budget.
   - (a) The President and the public need to be assured that a government corporation is:
     - (i) Fiscally sound and viable (*e.g.*, that the corporation is presently, and is expected to remain, self-sustaining), and
     - (ii) Not deviating from its public purpose (*i.e.*, the public purpose is being fulfilled).
   - (b) Publication of the President's Budget and the management report required by the CFO Act (which includes a Corporation's financial statements, auditor's report and statement by the head of the agency on the corporation's internal accounting and administrative control systems) give the Congress as well as the public the opportunity to review the operation of government corporations.
   - (c) The President has the same authority to review a government corporation as he does any other government entity.
   - (d) In choosing to exercise his authority, the President can stipulate the timing and format of budgetary submissions, and compel financial reporting.
   - (e) In practice, the application of budget requirements to a government corporation will differ depending upon whether OMB determines each year whether the corporation is:
     - (i) Clearly operating on a <u>self-sustaining</u> basis (e.g., revenues meet or exceed expenses) and consistently with its charter -- in which case, it will not be subject to further OMB budget

review.[7]

(ii) Not-self-sustaining (e.g., those which require appropriations as a one-time, or regular event, including appropriations for subsidy costs of credit) or is not operating consistently with its charter -- in which case, it will be subject to full OMB budget review, modification, approval, and apportionment.

2. Credit Reform. All government corporations that make direct loans or guarantee loans should be subject to the budget and accounting requirements of the Federal Credit Reform Act of 1990 (Title V of the Congressional Budget Act of 1974). [8] The estimated long-term cost to the Government of credit extended (as defined by the Act) must be estimated and an appropriation of the cost, if any, must be provided from the Congress or from retained earnings of the corporation before any direct loans or loan guarantees can be made.

C. Operating flexiblities.

1. Personnel rules. Consideration should be given to granting corporations flexibility from personnel rules (if, for example they need to quickly adjust to changing workforce requirements, or need to define jobs more broadly, or have more pay setting flexibility). However, employees of government corporations remain government employees even if exempt by law from certain provisions of title 5. [9]

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7 For example, the intent of apportionment is to prevent the over-obligation of appropriated funds and is thus inappropriate for self-financed corporations.

8 Government corporations engaged in direct loan and loan guarantee activities are subject to Credit Reform.

9 In particular, because corporation employees are employees of the executive branch, they are subject to the criminal conflict of interest statutes at title 18 of the U.S. Code. Exemptions from title 18 should be considered only in a very unusual case where the business of the corporation could not be conducted within the restrictions of title 18. Employees engaged in privatization initiatives should be

2. FTE limitations. As a general matter, employees of government corporations are Federal employees and are subject to the Federal Workforce Restructuring Act and OMB Circular A-76.
   (a) In general, a corporation that has defined business requirements or can demonstrate business conditions (*e.g.*, seasonal or surge workloads) or other requirements for FTE, and the funds to finance them, will be provided FTE levels needed for businesslike operations.
3. Employee benefits and pay limits in Title 5. Government corporations should not be exempt from limitations on employee benefits and pay. The top salary should not exceed that of Executive Level I. However, exemptions may be appropriate for government corporations:
   (a) If necessary to keep or recruit select personnel with unique technical background and skills (due to competitive pressures from the private sector). (If exceptions are sought for large numbers of personnel, it is appropriate to reexamine whether the corporation operates sufficiently like a private entity that it should be privatized.)
   (b) To facilitate moving the corporation into the private sector (*e.g.*, if it is expressly understood that this corporation is moving toward privatization).
4. Procurement rules. Consideration should be given to granting corporations flexibility to procure more efficiently or effectively (if, for example, they are having difficulty in obtaining necessary goods and services pursuant to existing procurement rules).

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made aware that the restrictions of the conflict of interest statutes in title 18 of the U.S. Code and the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. 2635) continue to apply to them as Federal Employees. In some cases, these restrictions may have the effect of limiting the involvement of employees in certain types of privatization activities. In such cases, employees should consult an ethics official for specific advice.

C. Placement and structure.

1. Government corporations are executive agencies subject to Title 31.
2. Government corporations should remain under the head of an existing department or agency (rather than established as an independent executive agency) to ensure coordination with common programmatic missions or activities, and general supervision. [10]
3. All government corporations should receive and be responsive to policy instruction from the President and/or agency head, though such policy coordination and oversight would not, in general, extend to day-to-day operational control and direction.
4. In accordance with the Government Corporation Control Act, government corporations cannot create a subsidiary without approval of Congress. A subsidiary of a government corporation should be subject to the same budget controls as the parent corporation, and should not be in a position, by itself, to increase the Government's exposure to loss.
5. While there should be no provision for a governing Board of Directors, it may be useful to have an advisory board if input from business advisors on business operations is desired.

D. Financing: Permanent authority to use collections instead of requesting annual appropriations.

1. This is generally appropriate for businesslike activities, and hence government corporations.
2. Revenues should be sufficient to cover all costs, including the full cost of employees' pensions and other benefits, interest and depreciation on capital utilized by the corporation, repayment of debt, etc.
3. If the proposed government corporation will be selling a

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[10] While legally "separate" and distinct, government corporations should still remain under the policy supervision and oversight of a Cabinet Secretary and Deputy.

Government asset, it should pay the Treasury for the asset and build this cost into its prices.

4. Except for funds deposited in credit financing accounts, which are subject to Section IX.B.2, funds should be deposited with the Treasurer of the United States or a Federal Reserve Bank or bank approved by the Secretary of the Treasury as provided by the Government Corporation Control Act. Funds deposited in the Treasury may be withdrawn only pursuant to an appropriation.
5. Interest on balances should be credited to the government corporation.

E. Borrowing.

1. Limitations on borrowing:
   - (a) Outstandings at any one time limited by law.
   - (b) Only from Treasury. (Should not say that its debt is not guaranteed by the Federal Government since all government corporation debt is Federal debt.)
   - (c) Subject to Treasury approval of terms and conditions.
   - (d) Stock not to be issued to Treasury in lieu of Borrowing from Treasury. If stock is needed to sell the corporation, it can be created at the time of sale.
   - (e) Lease-purchase transactions, being equivalent to borrowing, scores as indicated under standard budget scoring rules, see Section IX.B.2.
2. Use of borrowed funds:
   - (a) For start-up costs.
   - (b) For expansion of capital investment.
   - (c) Not for operating expenses, except (subject to OMB approval) for specific, emergency cash-flow requirements.[11]

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[11] Cash-flow problems may be an indication that a corporation is not self-sustaining. This provision is intended to enable corporations to respond to short-term, cash-flow deficiencies, not provide permanent access to additional capital.

F. Financial management.

1. A government corporation should always be subject to Federal accounting standards. (If a corporation is in a transitional stage pending privatization, it can elect to also use standards of the Financial Accounting Standards Board.)
2. A corporation should have a Chief Financial Officer (CFO).
3. A government corporation should produce an annual audited financial statement pursuant to the CFOs Act.
4. To the extent the corporation engages in profitable lines of business, the nature and amounts of earned surplus should be revealed in the financial statements (lines of business analysis).
5. For corporations with fewer than 20 FTE involved in audits and investigations, the Inspector General (IG) function should be performed by the IG for the Department or agency under which they are located. Corporations with more 20 or more FTE can consider creating their own IG if that can be demonstrated to be the more effective way to operate.

H. Periodic reauthorization.

1. A corporation should be subject to reauthorization not less often than every five years.
2. Reauthorization should be an opportunity to:
   (a) See how the corporation has performed (including a review of published performance measures) and
   (b) Consider privatization.
3. The corporation should be asked to make a formal presentation to OMB reviewing its business operations and programmatic performance, particularly in terms of its charter and other requirements, and against these standards.

Government-Sponsored Enterprises (GSE)

For information -- while not the subject of this outline, government sponsored enterprises (GSEs) are a related type of business entity:

A. Broadly defined, a GSE is a private corporation chartered by the Federal Government to achieve public purposes that has nongovernmental status and is excluded from the Federal Budget.

B. As a general matter, GSEs occur infrequently, and are limited to being a privately owned, federally chartered financial institution that has nationwide operations and specialized lending powers and that benefits from an implicit federal guarantee that enhances its ability to borrow and from other ties to the Federal Government.

C. GSEs were created because wholly private financial institutions were believed to be incapable of providing an adequate supply of loanable funds at all times and to all regions of the nation for specified types of borrowers.

D. A fundamental policy judgement about a GSE is whether the achievement of its public purpose is worth the amount of risk that the government must accept.

E. GSEs should have a Federal overseer created in law, with a regulatory regime that establishes and monitors performance of their mission and ensures that the entity is operating in a sound manner that minimizes risk to the government while enabling it to accomplish its mission.

F. GSEs should only be created with a clearly articulated "exit strategy" and an express sunset date in their charter.

G. A GSE could be fully privatized when the:

1. Assigned functions themselves are no longer necessary or appropriate for Federal involvement.
2. Business conditions which prompted its creation have changed (i.e., the special privileges bestowed upon them are no longer necessary to perform the functions for which they were created), or
3. A GSE is no longer the most efficient way to achieve the public purpose.

Government corporations in the budget: [12]

- Commodity Credit Corporation
- Community Development Financial Institutions Fund
- Corporation for National and Community Service
- Export-Import Bank of the United States
- Farm Credit Insurance Corporation
- Federal Crop Insurance Corporation
- Federal Deposit Insurance Corporation
- Federal Financing Bank *
- Federal Housing Administration
- Federal Prison Industries (UNICOR)
- Government National Mortgage Association
- Legal Services Corporation
- National Credit Union Administration Central Liquidity Facility
- Overseas Private Investment Corporation
- Pennsylvania Avenue Development Corporation
- Pension Benefit Guaranty Corporation
- Resolution Trust Corporation (RTC)
- Rural Telephone Bank
- Saint Lawrence Seaway Development Corporation
- Tennessee Valley Authority (TVA)
- United States Enrichment Corporation

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12 A 1995 Congressional Research Service (CRS) report "Managing The Public's Business: Federal Government Corporations" acknowledges that "There is at present no universally accepted definition of what constitutes a government corporation, hence there are several listings of government corporations, each different and based upon the definition employed by the compiler." (page xii).

This listing identifies the 21 government corporations in the Budget; the following list identifies two others which are not. CRS also identifies 23 government corporations, but their listing differs in four respects, by including the Securities Investor Protection Corporation and the United States Postal Service, but not the Farm Credit Insurance Corporation or the Federal Housing Administration.

Government corporations that are <u>not</u> in the budget:

- Corporation for Public Broadcasting
- National Railroad Passenger Corporation (AMTRAK)

Proposed government corporations:

- Air Traffic Corporation
- Bonneville Power Authority
- Federal Housing Corporation (FHC)
- U.S. Petroleum Corporation for NPR
- Patent and Trademark Office (PTO)
- Presidio Trust

Government-Sponsored Enterprises:

- College Construction Loan Insurance Corporation ("Connie Lee")
- Student Loan Marketing Association ("Sallie Mae")
- Federal National Mortgage Association ("Fannie Mae")
- Financing Corporation (FICO) [13]
- Federal Home Loan Mortgage Corporation ("Freddie Mac")
- Federal Agricultural Mortgage Association ("Farmer Mac")
- Farm Credit System institutions (Banks for Cooperatives, and Farm Credit Banks)
- Federal Home Loan Banks System institutions (FHLBs)

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13 Does not meet the definition of a GSE as defined in Appendix I.

-- Resolution Funding Corporation (REFCORP) [14]

[14] Does not meet the definition of a GSE as defined in Appendix I.

98-954 GOV

CRS Report for Congress

Federal Government Corporations: An Overview

November 24, 1998

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Congressional Research Service • The Library of Congress

ABSTRACT

In the 20th century, Congress has approved the establishment of a number of government corporations to perform functions assigned to them by law. Thcrc arc presently some 24 federal govemmcnt corporations (e.g., Federal Deposit Insurance Corporation). This report discusses the history, legal basis, and accountability issues associated with government corporations as well as the continuing debate over when and under what circumstances the corporation option is the most appropriate administrative option to follow. It explains the applicability of the Govcmmcnt Corporation Control Act of 1945, as amcndcd, and the nature of a new organizational entity, the pcrformancc-based organization (PBO). This report will be updated if additional govemmcnt corporations are crcatcd or amcndmcnts arc made to laws affecting government corporations. For rclatcd trcatmcnt of congressional chartcrcd *corporations, see: CRS* Report *98-372, Congressionally Chartered Corporate Organizations ("Title 36 Corporations") What Are They and How Congress Treats Them.*

Federal Government Corporations: An Overview

Summary

This report provides an overview of federal government corporations, a category currently consisting of some 24 corporate agencies performing functions assigned to them in law. A government corporation, as traditionally understood in the American context, is an agency of government, established by Congress to perform a market-oriented public service and produce revenues to meet or approximate its expenditures. Corporations cover the spectrum in size and function from large, well-known corporations, such as the United States Postal Service and the Federal Deposit Insurance Corporation to small, low-visibility corporate bodies such as the Federal Financing Bank in the Department of the Treasury and Federal Prison Industries in the Department of Justice.

Although no two government corporations are entirely alike, there are sufficient commonalities to make possible generalizations about their authorities, organization, mission, and depository practices. This said, it is also noted in the report that the dominant thrust in recent years with respect to regular executive agencies and corporations has been toward independence and disaggregation. Most proposed corporations, for instance, call for independent status outside the departmental structure and in some instances outside the executive branch altogether. The Clinton Administration has promoted a variation on the government corporation model referring to it as performance-based organizations (PBOs). PBOs are intended to provide maximum flexibility to agency executives to achieve "results," a goal that may, on occasion, conflict with the statutory requirements and management rules also applicable to the agency.

Special attention is given to the Government Corporation Control Act of 1945 (Control Act), as amended. The Control Act is not a general incorporation act as is in effect in the states. The charter for each federal government corporation is the separate legislation passed by Congress, thus permitting wide variance in legal and organizational structure. What the Control Act does do, however, is provide for standardized budget, auditing, debt management, and depository practices for corporations.

Within the executive branch there is at present little central management agency oversight or supervision of government corporations as a class of agency. Congress, at present, does not conduct comprehensive management oversight of government corporations by a single committee, preferring instead for oversight to be performed by subject-field committees on a corporate specific basis.

The need for the executive branch and Congress to develop new organizational structures that take into account both the public law requirements of governmental status and the flexibility that properly accompanies corporate bodies dependent upon revenues for services will probably increase rather than diminish, thereby insuring the continuing attraction of the government corporation option.

Contents

Federal Government Corporations: An Overview

Context

There is continuing interest in Congress and the executive branch in a class of entities known collectively as government corporations.[1] The first question to raise respecting this continuing interest is: What is a government corporation and how do you know one when you see it? The baseline definition used in this report is that a government corporation, traditionally understood in the American context, is an agency of government, established by Congress to perform a public purpose, provide a market-oriented service, and produce revenues to meet or approximate its expenditures.

At present, there is a wide variation in the legal, financial, structural, and policy bases for the 24 entities that the author has been able to classify as government corporations.[2] It is this diversity, however, that has raised concern that the corporate concept has, on occasion, been misapplied to designate agencies having no commercial function and which produce little or no revenue (e.g., the Legal Services Corporation (LSC), and the Corporation for National and Community Service (CNCS)).

In addition to the enumeration of corporations provided in the Government Corporation Control Act (31 U.S.C. 9101-10), there have been several other listings of corporations available, each different and based upon the definition employed by the compiler. Corporations cover the spectrum from such large, well-known corporations as the United States Postal Service and the Federal Deposit Insurance Corporation to such small, low-visibility corporate bodies as the Federal Financing Bank in the Treasury Department and Federal Prison Industries in the Justice Department.

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1 A. Michael Froomkin, "Reinventing the Government Corporation," *University of Illinois Law Review*, (1995): 543-634. Harold Seidman, *Politics, Position and Power: The Dynamics of Federal Organization*, 5th ed. (New York: Oxford University Press, 1997) pp. 189-96. U.S. General Accounting Office, *Government Corporations: Profiles of Recent Proposals*, GAO/GGD-95-57FS (Washington: GAO, 1995). U.S. Senate, Committee on Governmental Affairs, *Managing the Public's Business: Federal Government Corporations*, by Ronald C. Moe, S. Prt. 104-18, 104th Cong., 1st sess. (Washington: GPO, 1995).

2 For a listing of federal government corporations, as defined in this report, please consult Appendix I.

The number of corporations is in moderate flux. New corporations are being added from time to time (e.g. U.S. Enrichment Corporation in 1992 and Corporation for National and Community Service in 1993) while others are being disestablished (e.g., Federal Savings and Loan Insurance Corporation in 1989 and Pennsylvania Avenue Development Corporation in 1996).

There is also confusion about corporate organizations with ties to the federal government, but that are not government corporations, as traditionally defined, such as government-sponsored enterprises (e.g., Fannie Mae).[3] Government-sponsored enterprises (GSEs) are important institutions worthy of separate analysis, but they are not discussed extensively in this report. Finally, bearing consideration is the concept of an evolving "quasi government," to use Harold Seidman's phrase, where the legal and political lines of accountability are both intentionally and unintentionally made tenuous.[4] In 1996, for instance, the Office of Personnel Management (OPM) created the United States Investigative Services Corporation as an employee stock-ownership plan (ESOP), an entry into the quasi government that has sparked debate regarding its status and authority.[5]

Interest in the government corporation option, and variations on this theme, have increased in recent years[6] Three factors contributing to this interest are worth noting. First, the current restrictive character of the federal budget encourages agencies to develop new sources of revenue (e.g., outsourcing services to the private sector and to other agencies).[7] Second, experience suggests that it is politically easier for corporate bodies to be exempted by Congress from general management law provisions (e.g., personnel ceilings) than it is for traditional agencies. Finally, the corporate concept appears to many to be supportive of contemporary theories of public management (e.g., "reinventing government") that emphasize entrepreneurship, risk-taking, and private sector practices in federal administration.'

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3 In 1996, the board of directors of the Federal National Mortgage Association officially changed their name to Fannie Mae, previously the corporation's popular name.

4 For a general discussion of quasi governmental bodies, consult: Harold Seidman, "The Quasi World of the Federal Government," *The Brookings Review,* vol. 2, Summer 1988, pp. 23-27.

5 U.S. General Accounting *Office, Privatization of OPM's Investigations Service,* GAO/GGD-96-97 (Washington: GAO, 1996). Ronald P. Sanders and James Thompson, "Live Long and Prosper: How One Former Federal Organization is Adjusting to Life After Government," *Government Executive,* vol. 29, April 1997, pp. 5 l-53. Stcphcn Barr, "OPM, in a First, Acts to Convert *an* Operation *into* Private Firm," *Washington Post,* April 14, 1996, p. A4.

6 U.S. General Accounting *Office, Government Corporations: Profiles of Recent Proposals,* GAO/GGD-95-57FS (Washington: GAO, 1995).

7 For a discussion of how the Patuxcnt River Naval Air Station contracts out its services to state governments and private organizations, including USC of their Dcfcnse Department aircraft, see: Steve Vogel, "Pentagon Recruits New Business: Military Turns to Private Enterprise to Help Pay Bills," *Washington Post* August 8: 1998, p, B 1.

8 U.S. National Performance Review (Office of Vice Prcsidcnt Al Gore), *Businesslike Governmcnt: I,cs.son.s Learned.fiom America's Best Companies* (Washington: GPO. 1997).

In a typical contemporary session of Congress, several bills are introduced to establish government corporations. These actions prompt questions as to their legal character, their utility ***vis-a-vis*** traditional agencies, and their limitations as units of governmental institutions. In the 104" Congress, for instance, two laws were enacted establishing government corporations (Presidio Trust of San Francisco, 16 U.S.C. 360bb; and Panama Canal Company, 22 U.S.C. 3501). In the 105th Congress, one bill (H.R 400, Omnibus Patent Act of 1998) to establish the Patent and Trademark Office as a wholly-owned government corporation, passed the House,[9] but was not considered by the full Senate.

A development with some limited relevance to government corporations involves what the National Performance Review (NPR)[10] refers to as a performance based organization (PBO).[11] PBOs are discussed in a subsequent section. Suffice it to note here that projected PBOs share certain characteristics with government corporations, such as an objective to marketize activities and follow certain business-type practices, but they differ in the sense that they would not necessarily have to meet the same legal and financial accountability requirements imposed upon government corporations. PBOs are not defined in law, rather PBO is an informal designation given by the NPR to agencies, corporations, or programs that meet the its criteria for administering market-oriented activities.[12]

A government corporation is not a panacea for contemporary public management problems. There are times when it may be an appropriate choice and times when it may not. Understanding the unique character of government management, based as it is upon tenets of public law, provides guidance in weighing these choices.[13]

'*Congressional Record*, daily edition, April 4, 1998, p. H1742. U.S. Library of Congress, Congressional Research Service, *Reorganizing the Administration of Patents and Trademarks: The Government Corporation Option (H. R. 400/S. .507),* by Ronald C. Moe, CRS Report 97-447GOV (Washington: CRS, 1997).

10 The term, "National Performance Review" (NPR), refers both to a report and to an organization. In 1993, Vice President Al Gore headed a group, the NPR which issued a report titled *From Red Tape to Results.. Creating a Government That Works Better and Costs* Less (Washington: GPO, 1993), and is cited as the NPR Report. The NPR however, also refers to a nonstatutory, ongoing organization headed by the Vice President that continues to issue reports (1998) and take a leadership role in management initiatives.

11 U.S. Library of Congress, Congressional Research *Service, Performance-Based Organizations in the Federal Government: A Reinvention Innovation,* by Harold C. Relyea, CRS Rept. 97-72 GOV (Washington: CRS, 1997). Alasdair Roberts, "Performance-Based Organizations: Assessing the Gore Plan," *Public Administration Review, vol. 57,* November/December 1997, pp. 465-78.

12 U.S. National Performance Review, *Reinvention's Next Steps: Governing in a Balanced Budget World* (Washington: NPR, 1996). U.S. National Performance Review, *The Blair House Papers* (Washington: NPR, 1997).

13 See, for example, Ronald C. Moe, "The Importance of Public Law: New and Old Paradigms of Government Management," in Phillip J. Cooper and Chester A. Newland, eds. *Handbook of Public Law and Administration* (San Francisco Jossey-Bass Publishers, 1997); pp. 41-57.

Evolution of the Federal Government Corporation

Historically, the federal government has been involved in few commercial enterprises. There were some early instances of the federal government participating in otherwise private corporate enterprises on a shared ownership basis, most notably the first and second Banks of the United States. This practice came into question, however, as a consequence of a Supreme Court ruling in 1819.[14] From that time to this, the federal government, with few exceptions, has consciously avoided shared ownership involvement with private, nongovernmental entities.

The first time the federal government acquired a corporation outright occurred in 1903 when the Panama Railroad Company was purchased from the French Panama Canal Company.[15] Since then, a number of corporate bodies have been established as part of the federal government, with growth in that number tending to come in spurts and generally in response to emergencies. The first large-scale use of the corporate option accompanied the mobilization for World War I. Later the Depression of the 1930s fostered numerous corporations (e.g., the Reconstruction Finance Corporation, and Tennessee Valley Authority).[16] Finally, World War II, prompted additional federal corporations. After the passing of each of these emergencies, many of the corporations which dealt with them were abolished or absorbed into the permanent executive branch agencies.

In 1945, partly in response to the proliferation of corporate bodies created for the war effort, Congress passed the Government Corporation Control Act.[17] Provisions of the act standardized budget, auditing, debt management, and depository practices for corporations. Notwithstanding unusual provisions that may be present in their enabling statute, government corporations remain "agencies" of the United States and are therefore subject to all laws governing agencies except where exempted from coverage by provisions of general management laws or by provisions in the enabling act of the corporation.[19]

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[14] *McCulloch* v. *Maryland* (17 U.S. (4 Wheat.) 3 15, (18 19)). The Supreme Court's ruling implied that partial federal ownership of a corporation, in this instance the Bank of the United States, assigned the corporation certain attributes normally rcserved to the sovereign authority (e.g., non-tasable status). See also: *Osbom v. Bank 0f the United States,* 17 U.S. (4 Wheat.) 738 (1824). Here the Court indicated that the Necessary and Proper Clause of the Constitution (Art. I, sec. 8, cl. 18) was sufficient to allow Congress to establish corporations, even private corporations.

[15] Marshall Dimock, *Government-Operated Enterprises in the Panama Canal Zone* (Chicago: University of Chicago Press, 1934).

[16] John Thurston, *Government Proprietary Corporations in English-Speaking Countries* (Cambridge: Harvard University Press, 1937).

[17] 31 U.S.C. 9101-9110.

[18] The Suprcmc Court opinion in the 1946 case of *Cherry Cotton Mills v. United States (327* U S 536) held that government corporations arc agcncics of the United States. "That the Congress chose to call it [Reconstruction Finance Corporation] a corporation does not 'altcr its character so as to make it something other than what it actually is, an agency selected by

(continued.. .)

The Government Corporation Control Act of 1945 (Control Act) is not a general incorporation act such as is in effect in the states. The charter for each federal government corporation is the separate enabling legislation passed by Congress. The Control Act also does not offer a general definition of what constitutes a government corporation. It simply enumerates organizations covered by the act.

In addition to the enumeration of corporations in the Control Act, there have been several other listings of corporations available, each different and based upon the definition employed by the compiler. The range in the number of corporations listed runs from the low of 22 to a high of 44, both figures derived from General Accounting Office (GAO) reports." The corporations cover the spectrum from such large, well-known corporations as the United States Postal Service and the Federal Deposit Insurance Corporation to such small, low-visibility corporate bodies as the Federal Financing Bank and Federal Prison Industries.

In the absence of a general incorporation act with organizational definitions, how is one to know when a government corporation is the most suitable option and what criteria should be met before a government corporation is established?

In an effort to provide criteria to determine when the corporate option was appropriate, President Harry Truman, in his 1948 budget message, stated:

> Expcriencc indicates that the corporate form of organization is peculiarly adapted to the administration of govcmmcnt programs which arc predominately of a commercial character — those which arc revenue producing, are at least potentially self-sustaining and involve a large number of business-type transactions with the public. In their business operations such programs require greater flexibility than the customary type of appropriations budget ordinarily permits. As a rule, the usefulness of a corporation rests on its ability to deal with the public in a manner employed by private enterprise for similar work.20

In recent years, Congress, generally at the President's behest, has created agencies titled "corporations" that do not meet these criteria. The Corporation for

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18 (...continued)
the Government to accomplish purely govcmmental purposes."

19 In a 1988 report the GAO profiled some 44 government corporations. U.S. Gcncral Accounting Office, *Profiles in Existing Government Corpomtions,* GAO/AFMD-89-43FS (Washington: GAO, 1988). In 1995, using a more precise and narrow definition, the GAO concluded that there were actually 22 government corporations. U.S. General Accounting Office, *Government Corporutions: Profiles of Existing Corporations,* GAO/GGD-96- 14 (Washington: GAO, 1995). Some years earlier, in 1981, the National Academy of Public Administration issued a substantial report on government corporations and listed 39 corporations *Report on Government Corporations,* 2v. (Washington: National Academy of Public Administration, 198 1). Finally, in a major recent study of government corporations, A. Michael Froomkin, using a somewhat eclcctic definition, simply concluded that there wcrc "more than forty" government corporations. "Reinventing the Govcmmcnt Corporation," *University of Illinois Law Review (1995},* p. 549.

20 U.S. Congress, House, *Document* NO. 19, 80th Congress, 2d session (Washington: GPO, 1948), pp. M57-M62.

Public Broadcasting and the Legal Services Corporation are examples of "corporations" that do not perform commercial functions (i.e., they do not support their operations from income from legal fees and advertizing rates) but rather were intended to be insulated from most elements of supervision by the executive and political accountability to the President.

Characteristics of a Government Corporation

No two federal government corporations are completely alike. There are sufficient commonalities among the several corporations, however, that it is possible to make some generalizations about their authorities, organization, mission, and behavior.

Legal Status.

Government corporations, no matter what function they perform or how "private" they may appear to the public or to themselves, are agents of the state subject to constitutional limitations." As the Supreme Court concluded in the 1995 *Lebron* case, a government corporation has certain inherent legal characteristics that cannot be shed simply by legislative language or by corporate fiat.[22] The nature of the function performed (e.g , managing a railroad) has no effect upon its governmental character. The governmental and private sectors are fundamentally separate and distinct, with the distinctions based largely in legal theory, not economic theory.[23] This understanding is essential to recognizing both the potentialities and limitations of the government corporate concept. The government corporation remains

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21 Ronald C. Moe and Robert S. Gilmour, "Rediscovering Principles of Public Administration: The Neglected Foundation of Public Law," *Public Administration Review, vol. 55,* March/April 1995, pp. 135-46.

22 The Supreme Court in a 1995 case faced the issue of distinguishing between a governmental and private corporation. The National Railroad Passenger Corporation (AMTRAK) established by Congress (45 USC. 45 1) and enumeratcd as a "mixed-ownership corporation" under 3 1 U.S.C. 9101, was sued by Michael Lcbron for rejecting on political grounds an advertising sign he had contracted with them to display. Lebron claimed that his First Amendment rights had been abridged by AMTRAK because it is a govcmmcnt corporation and therefore an agency of the United States. AMTRAK argued, on the other hand, that its legislation provides that it "will not be an agency or establishment of the United States Government" and thus is not subject to constitutional provisions governing freedom of speech. The Court decided that while Congress can determine AMTRAK's governmental status for purposes within Congress's control (e.g., whether it is subject to statutes such as the Administrative Procedure Act), Congress cannot make the final determination of AMTRAK's status as a government entity for purposes of determining constitutional rights of citizens affected by its actions. To do so, in the Court's view, would mean that the government could evade its most solemn constitutional obligations by simply resorting to the corporate form of organization. *Michael A. Lebron v. National Railroad Passenger Corporation; 5* 13 U.S. 374 (1995).

23 Harold J. Sullivan, "Privatization of Public Services: A Growing Threat to Constitutional Rights," *Public Administration Review,* vol. 47, November/December 1987, pp. 46 I-68. Ronald C. Moe, "Exploring the Limits of Privatization," *Public Administration Review,* vol. 47, Novcmbcr/Decembcr 1987, pp. 453-60.

governmental in character until Congress determines it shall be fully private, thereby coming under private law.

As a general proposition, the attorney general is vested with central control over the litigation to which the U.S. government is a party.[24] Various statutes recognize that the attorney general is the chief legal officer for all departments and agencies. However, in an uneven pattern over the years, exceptions have been permitted to this central authority. The independent regulatory commissions, for instance, have some independence (although the degree of independence varies considerably from commission to commission) in their litigation authority.[25] While the Justice Department has consistently favored central coordination of litigation, this view has been diicult to maintain in practice. With the relatively small staff of the department and its understandable reluctance to become responsible for routine litigation, there has been a trend toward awarding greater authority and flexibility to the departments and agencies in their legal affairs.

With respect to government corporations, typically in their enabling legislation they are assigned a legal personality distinct from that of the United States. Most are subject to and may initiate civil suits, Government corporations, being agencies of the United States, have their employees come under the limited waiver of immunity provided in the Federal Tort Claims Act (FTCA).[26]

Harold Seidman notes: "As a body corporate, a government corporation has a separate legal personality distinct from that of the United States. A corporation, therefore, does not enjoy the traditional immunity of the United States from being sued without its consent." Further, a corporation is generally provided authority "to determine the character and the necessity for its expenditures, and the manner in which they shall be incurred, allowed and paid." Corporations can generally borrow funds through the Federal Financing Bank of the Treasury Department, one advantage of this practice being "that such unguaranteed corporate obligations are not included under the public debt ceiling."[27]

In practical terms, the purpose of permitting corporations to sue and be sued in their own name is to enable a private business to contract with a government

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[24] 28 U.S.C. 519: "Except as otherwise authorized by law, the Attorney General shall supervise all litigation to which the United States, an agency, or officer thereof is a party, and shah direct all United States attorneys, assistant United States attorneys, and special attorneys appointed under section 543 of this Title in the discharge of their respect duties."

[25] For a discussion of litigation authority being delegated to agencies, see: U.S. Congress, *Senate, Committee* on Governmental *Affairs, Study on Federal Regulations, 5v.* (Washington: GPO, 1974) vol. 5 (Regulatory Organization), pp. 54-67. U.S. Administrative Conference of the United States, "Multi-Member Independent Regulatory Agencies: A Preliminary Survey of Their Organization," (Revised edition), May 21, 1990.

[26] The Federal Tort Claims Act defines federal agencies to include: "the executive departments,...independent establishments of the United States, and corporations (other than contractors) primarily acting as instrumentalities or agencies of the United States,." 28 U.S.C.A. 2671.

[27] Seidman, *Politics, Position. and Power, 5th cd.,* p. 190.

corporation under the assurance that if something goes amiss, it can go to court to settle the matter. With a regular government agency, however, a contractual dispute must normally go through a laborious process in the Court of Claims; if the contractor wins, they must wait for an appropriation; the Departments of Justice and Treasury, the Office of Management and Budget, the President and both Houses of Congress may become involved in the claim. With the government corporation, however, this process is simplilied and when a contractor prevails, they can usually obtain a prompt settlement.

Budgeting and Finance.

The budget process is a useful management tool for planning as well as for maintaining accountability. Presidents and central management agencies find the discipline of the budget an essential element in their management arsenal. Regular agencies of the executive branch, with few exceptions, are subject to uniform rules and regulations with respect to the budgets. Government corporations, on the other hand, are exempt either individually or collectively from many executive branch budgetary regulations. These exemptions are predicated, for the most part, on the idea that with the corporate structure, users, rather than the general taxpayer, are the principal source of revenue and that fluctuations in income and expenditures do not impact in any material way the budget of the federal government.

The Control Act, as amended in 1982 (96 Stat. 1042) provides that each wholly-owned government corporation shall prepare and submit to the President a "business-type budget" in a way, and before a date, the President prescribes by regulation for the budget program. "This budget program shall contain estimates of the financial condition and operation of the corporation for the current and following fiscal years and the condition and results of operations of the last fiscal year. Further, it shall contain statements of financial condition, income and expense, and sources and uses of money, an analysis of surplus and deficit, and additional statements and information to make known the financial condition and operations of the corporation, including estimates of operations by major activities, administrative expenses, borrowings, the amount of U.S. Government capital that will be returned to the Treasury during the fiscal year, and appropriations needed to restore capital impairment." (3 1 U.S.C. 9104) The objective of the budget program is to permit the corporation sufficient financial flexibility to carry out its activities. The President, after review and revision, submits these budget programs to Congress at the same time as the executive branch budget is submitted.

Many Members of Congress feel somewhat uneasy with broad, "business type budgets," also referred to as "budget programs." To be sure, Congress can alter these budget programs and can limit the use of corporate funds for any purpose, but this option is seldom employed. Faced with complex projections and agencies with little direct budgetary impact, Members understandably give corporate bodies marginal attention and when they do give attention it is often on the "administrative expenses" line account. It is not clear what the term "administrative expenses" entails but corporations see it as including any "entertainment expenses" and thus keep the latter to the minimum. As a general assessment, the corporations come under comparatively little congressional scrutiny except when there is some political or financial threat evident. Seidman notes: "In essence, the business-type budget provides for a qualitative rather than a quantitative review of proposed corporate expenses."[28]

Traditional agencies of the United States receive the preponderance of their financial support from funds appropriated by Congress. Government corporations, on the other hand, generally receive most, if not all, their funds from users of their services. Thus, the latter relationship has a business character in which it is the obligation of the corporate body to provide services as long as the buyers are willing to pay. This being the case, revenues, expenditures, and even personnel will tend to fluctuate according to consumer demand.

The Control Act, as amended, requires those wholly-owned corporation enumerated in the Act to submit to the President a "business-type budget" that resembles a program plan for meeting projected commercial demand upon the corporation for the coming year. The President, and later Congress, may alter the business-type budget and programmatic assumptions, but this happens infrequently. Wholly-owned government corporations generally must include a category of expenses in budget submissions labeled "administrative expenses" and it is this vague category (e.g, entertainment fund) that tends to receive most congressional attention and will occasionally be subjected to "limitations." There is something of a reversal of presumption at play here when considering the budgets of government corporations. Regular agencies have the burden of proof to make in arguing for appropriated funds. Government corporations, on the other hand, have few apparent limits to their projected revenues and expenditures, with the administrative expenses account being considered separately. With respect to the latter, the corporations have the burden of proof to show to Congress why it should not place "limitations" on the budgeted administrative expenses.

Until 1975, GAO was responsible under the Control Act for performing annual financial audits of government corporations. At the request of GAO, the Control Act was amended to provide for triennial audits of the financial transactions of wholly-owned corporations rather than annual audits. In 1990, as part of the Chief Financial Officers Act,[29] the GAO's recommendation that government corporations be subject once again to annual audits was accepted. Henceforth, however, the audit is to be conducted by the corporation's inspector general "or by an independent external auditor, as determined by the inspector general or, if there is no inspector general, the head of the corporation," according to accepted government auditing standards. The comptroller general, however, continues to be authorized to review any corporate financial statement.

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28 I., p. 192.

29 31 U.S.C. 9105; Sections 305 and 306 of the Chief Financial Officers Act of 1990: P.L. 101-576.

Location and Governance.

The location, structure, and governance of government corporations varies greatly. Corporate status does not limit where in the executive structure a corporation may be located. Corporations may be located in executive departments (e.g.,, the St. Lawrence Seaway Development Corporation in the Department of Transportation) or be assigned independent status (e.g., the Export-Import Bank). A government corporation may be so structured that it is but a financial entity whose employees are actually employees of the parent agency (e.g., the Federal Financing Bank in the Department of the Treasury and Commodity Credit Corporation in the Department of Agriculture).

There is no one form of governance necessarily associated with government corporations. Whether a government corporation is best managed by a till-time board (e.g., TVA), a chief executive officer selected by a part-time board and responsible to it (e.g., Corporation for National and Community Service), a part-time board consisting of Cabinet-level officials of other agencies (e.g., Pension Benefit Guaranty Corporation)," a mixed board of governmental and private appointees (e.g., Overseas Private Investment Corporation), or by a single administrator responsible to a department secretary and ultimately to the President (e.g., Government National Mortgage Association, "Ginny Mae") is an open question. There are positives and negatives to the various options for corporate governance.

A board of directors is the trademark of a government corporation, according to many lawmakers and attorneys. Marshall Dimock, writing in 1949, argued that a board of directors was considered an essential element for an "authentic" government corporation. "Being a separate and distinct entity, headed by its own

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30 Cabinet secretaries placed on corporate boards, or any boards for that matter, rarely attend such meetings, sending subordinates instead to protect departmental interests. For approval of this process, see: U.S. Department of Justice, 6 Op. Off. Legal Counsel *257, Delegation of Cabinet Members' Functions as Ex-Officio Members of lhe Board of Directors of the Solar Energy and Energy Conservation Bank (* 1982).

The Pension Benefit Guaranty Corporation (PBGC), an agency within the Department of Labor, provides evidence of the problems associated with boards of directors that include offiocials of other departments. The board of directors of the PBGC has three members: the secretary of the Treasury, the secretary of Commerce, and as chairman, the secretary of Labor. "Such arrangements," according to the National Academy of Public Administration Report, "inherently cause confusion as to the corporation's status and the role of the Sccrctary of Labor. To have Cabinet officers serve as directors of a subordinate unit of an executive department other than their own places him and the head of that department in an anomalous position. Can the secretaries of the Treasury and Commerce give orders to the secretary of Labor? On thc other hand, are the secretaries of Treasury and Commerce, when acting as PBGC directors, in any way required in formulating policies to conform to the policies of the Secretary of Labor?" Perhaps because of such anomalies, although the bylaws call for "regular meetings," the board ncvcr met bctwccn March 1982 and April 1991 and rarely since that time. National Academy of Public Administration, *Study of the Pension Benefit Guaranty Corporation's Corporate Status* (Washington. NAPA, 199 l)- pp. 5-6.

board of directors, the corporation is inherently better able to succeed than the ordinary department of government."[31]

A few years later Harold Seidman challenged the view that a board of directors was an essential and necessarily desirable element for a government corporation. Dimock's view, he asserted, was based on an inappropriate borrowing of state practice to the federal government. State incorporation laws require boards of directors for private corporations to insure representation where ownership is held by more than one party. In government corporations, under this reasoning, because ownership resides in the government alone, there is no inherent need for a board of directors.[32] Government corporations, Seidman pointed out, have existed and operated without boards of directors. A board of directors may well be found advisable and useful under some circumstances, but it is not the ***sine quo non*** of a government corporation.[33]

Whether or not a board of directors is essential or desirable for a government corporation, the fact is that all but two federal government corporations presently have boards of directors. The two exceptions being the Government National Mortgage Association ("Ginny Mae"), and the St. Lawrence Seaway Development Corporation. In a study published in 198 1, the National Academy of Public Administration was critical of boards of directors in general:

> We believe that this arrangcmcnt, borrowed from the private corporation model, has more drawbacks than advantages and that in most cases the governing board would be better replaced by an advisory board and the corporation managed by an administrator with full executive powers. A governing board may cut or confuse the normal lines of authority from the President or departmental secretary to the corporation's chief executive officer. With an advisory board, the secretary's authority to give that officer policy instruction is clear, as is the officer's right to report directly to the secretary and to work out any exemptions from or qualifications of administration or departmental policies and practices which the corporation rcquircs.[34]

There is little doubt that a board of directors, particularly a part-time, "outsiders" board, is a "buffer" between the corporation's top executive and political officials, including the President. Whether such a buffer is a desirable feature in the overall administrative system, however, is a question subject to debate. Notably, it is also argued that corporation board appointments are patronage plums for the White House since the jobs are not generally demanding.

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31 Marshall E. Dimock, "Government Corporations: A Focus on Policy and Administration," *American Political Science Review,* vol. 43, October 1949, pp. 914.

32 Harold Seidman, "The Theory of the Autonomous Government Corporation," *Public Administration Review,* vol. 12, Spring 1952, pp. 93-111.

33 *Id.*

34 National Academy of Public Administration, *NAPA Reporl on Governmenl Corporations,* 2 vols. (Washington: NAPA, 198 I). 1; pp. 3 l-32.

The effectiveness and utility of boards is dependent upon a number of factors: the coherency of the enabling legislation, the conceptual integrity and soundness of the program itself, and the number and quality of membership. Large boards, (that being over 12 members), for instance, may experience difficulty in making decisions. The play of internal factors, such as the size of the board, the primary loyalties of board members (whether to the corporation or CO an outside constituency group), and the relationship of the board to the corporate management all also have their place in the managerial equation.

Central Management Agency Oversight

There is, at present, little central management agency oversight or supervision of government corporations as a category of agency in the executive branch. Nor is there any central unit charged with designing government corporations from the perspective of presidential or central management interests.[35] Government corporations today are largely perceived as discrete entities, each with its own political and administrative requirements and each with its own route and degree of political accountability. Individual corporations come under scrutiny from time to time by OMB and Congress, or more precisely, a congressional committee responsible for oversight. More often than not, the immediate impetus for the oversight follows from indications that a corporation is operating at financial risk or there is an appearance of wrongdoing.

The current absence of systematic oversight of corporations as a class runs counter to the intentions of the sponsors of the Control Act of 1945. The Bureau of the Budget (predecessor organization to the Office of Management and Budget) was instrumental in the passage of the Control Act and created a separate office to oversee the formation, and to monitor the operation, of government corporations on behalf of the President. During the 1960s this specialized staff function atrophied until, at some point, in the 1970s it is fair to conclude that there was little remaining central executive staff capacity to provide information, expert advice, or oversight of government corporations or to develop and implement consistent policies governing their formation, authorities, and operations.[36]

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[35] See, for example: Alan Dean, Dwight Ink and Harold Scidman, "OMB's 'M' Fading Away," *Governmenl Executive,* 26(June 1994): 62-64. Ronald C. Moe, "At Risk: The President's Role as Chief Manager," in *The Managerial Presidency* 2nd ed., ed. James Pfiffner (Lawrence, KS: University Press of Kansas, forthcoming 1998).

[36] The Office of Management and Budget (OMB) and its predecessor organization, the Bureau of the Budget (BOB), ceased to monitor government corporations and enterpriscs during the 1960s. Charles Bingman, speaking to a 1978 confcrcncc on public cntcrprises, noted that he had been the last person in the BOB to undertake this monitoring role. He stated that he ceased the monitoring when it became apparent that the leadership of the agency was no longer intcrcstcd in this role. In his view, both the executive branch and Congress had cffcctivcly abandoned the intent of the Control Act. *Proceedings,* Rcscarch Confcrcricc in Public Enterprises. June 1, 1978 (Charlottcsvillc, VA: Federal Executive Institute, 1978), p. 18.

Government corporations are not considered by OMB to be a category of organization to be supervised collectively. OMB, in support of its position, contends: "The responsibility for oversight of government corporations was not changed by the OMB 2000 reorganization. That is, government corporations will continue to be reviewed by the Resource Management Office (RMO) which has responsibility for the functional area most closely associated with the corporation's mission.. . . OMB does not review government corporations separately from other government organizations that perform similar functions."[37] The executive branch treatment of management responsibilities respecting government corporations as a class of organization tends to place additional burdens on Congress and its committees to determine if the corporations are respecting the provisions of the general management laws (e.g., the National Environmental Protection Act and the Competition in Contracting Act).

One corollary of weak central management oversight of government corporations is the lack of answers to fundamental issues regarding when and how government corporations ought to be created and utilized. There are at least two schools of thought respecting the proper use of the government corporation option relating to its structure, authority, and financial systems. One school holds that government corporations, including agencies called corporations but which do not perform commercial activities, should be encouraged, provided maximum policy and financial autonomy, and be subject to such oversight as is appropriate for other agencies and instrumentalities in the same policy field. The legal responsibilities of the corporation should be located in its enabling statute.

The position of the second school is that government corporations should be established only when appropriate criteria and standards, developed by a central management agency, are met. Such standards should be reflected in a national incorporation law and apply to all proposed and functioning corporate bodies properly defined. Government corporations should be considered to be part of the executive branch but with recognition of their distinctive needs and oversight requirements as a category of institutions.

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37 Lettcr dated May 24. 1994, from OMB Director Leon Panetta to Senators David Pryor and Carl Levin of the Scnate Governmental Affairs Committee. p. 4.

Government Corporations As Transition Organizations

The government corporation concept may be considered as a useful alternative to privatization of some agency or it may be employed as a transition step toward eventual full privatization.[38] Our interest here is limited to the corporation as a transition option.

The government corporation concept remains a useful, often necessary, option for making a transfer of a government agency or program to the private sector. The principal utility of the governmental corporation is that it can demonstrate marketability and asset value, critical elements in any successful privatization venture. Thus, Conrail was created by Congress in 1976 from the remnants of seven private, bankrupt railroads. It took some 10 years and an investment of $8 billion by the federal government to bring Conrail up to industry standards before entertaining a reasonable expectation that the railroad would be attractive to private investors.[39] The federal government received approximately $2 billion from the sale but the real payoff was that the Northeastern region of the country was once again provided a viable freight rail system. The transition period as a government corporation was necessary to develop a record as a potentially profit-making venture prior to a successful privatization (divestiture) effort.[40]

Currently the U.S. Enrichment Corporation (USEC)[41] is a transitional government corporation preparing for privatization. USEC, previously a regular agency in the Department of Energy, operated uranium enrichment plants in Kentucky and Ohio. In the 1950s, the plants produced high-enriched uranium for defense purposes. Times changed and the United States was successfully challenged by new international entrants into the market. Today, the United States produces little more than one-third of the world's enriched uranium, much of it destined for private

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38 The term "privatization" is defined and interpreted in many different ways. E.S. Savas, "A Taxonomy of Privatization Strategies," *Policy Studies Journal* vol. 18, Winter 1989190, pp. 343-55. Some define the term narrowly to include only instances where a function or entity is fully shifted (divested) from the governmental to the private sector. Others define privatization expansively to include virtually any decision (e.g., contracting with third parties) that moves an activity toward private sector practices. Ronald C. Moe, "Managing Privatization: A New Challenge to Public Administration" in *Agenda for Excellence 2: Administering the State,* eds. B. Guy Peters and Bert A. Rockman (Chatham, NJ: Chatham House Publishers, 1996): 135-148. In this report, privatization is defined narron-ly to embrace only those actions resulting in ultimate full divestiture.

39 National Academy of Public Administration, *Conrail and the Uranium Enrichment Corporation: A Comparison,* by Alan Dean (Washington: NAPA, 1989) p. 5.

40 It should not be forgotten that before Conrail could be privatized, it first had to be nationalized. Seven private railroad corporations went bankrupt and it required the federal government to resolve bankruptcy issues, establish a long-term, comprehcnsivc commercial rail plan develop corporate management capacity, invest capital funds, renegotiatc contracts, and get the whole project functioning in a short period of time. The federal government was successful and only then was the private sector intcrcstcd in "buying" the railroad.

41 *42* U.S.C. 2297.

operations. The USEC is well into the process of "privatizing" and is encountering the frictions and misunderstandings that one might expect in such a transition.[42]

Several proposals under consideration for privatization, such as the Naval Petroleum Reserves (one of them referred to popularly as the Teapot Dome oil field) are candidates for possible government corporation status in preparation for ultimate sale to the private sector.43 As the situation respecting Naval Petroleum Reserves suggests, however, the imputed value of governmental assets can be misleading when the standards of the market are applied.@

Variation On A Theme: Performance Based Organizations (PBO)

Vice President Gore, in a speech at the National Press Club on March 4, 1996, called for changing the fundamental basis of organizing and managing the federal government to include "adopting some characteristics of private sector companies." In this effort to "reform" government, the Vice President would seek to "give agencies that deliver measurable services a greater degree of autonomy from governmentwide rules, in exchange for greater accountability for achieving results."" Such restructured agencies would be called "performance based organizations" (PBOs).46

The term, performance based organizations, and its acronym, PBO, are not defined in law nor has the administration yet proposed that the term be assigned a legal definition. It is used, however, as a term of art by supporters and has been employed in various government documents. The absence of precision and authority

42 Although the USEC is committed to its own privatization, this choice may be difficult to implement. Unable to find any private company to buy the federal corporation, the Treasury is considering a stand-alone private corporation sold to individual investors. The problems, however, include dated technology, declining demand and oversupply, and a government deal to buy large quantities of enriched fuel from the Russian government at prices above international market level. Matthew L. Wald, "In an Unusual Deal, U.S. Will Sell Stock in Uranium Mills," New York *Times*, June 30, 1998, p. Al Eric Moses, "Uranium Inc," *Government Executive*, vol. 29, April 1997, pp. 59-62. Allan Sloan, "It Might Lack Fox Stock's Glamour, but USEC Could Enrich Investors as Well as Uranium," *Washington Post*, July 7, 1998, p. E3.

43 National Academy of Public Administration, *Restructuring the Naval Petroleum and Oil Shale* Reserves (Washington: NAPA, 1994).

44 Elizabeth Davis, "Once a Teapot in a Tempest, Now Just a Lonely Outpost: Navy Oversees Unwanted Oil Field," *Washington Post,* August 14, 1998, p. A23.

45 U.S. White House, Office of the Press Secretary, "Vice Prcsidcnt Gore Announces Sis Steps to Reform Government," Press release, March 4, 1996. The Office of Personnel Management also issued a "PBO Personnel Templatc" in a press rclcasc, March 27, 1996.

46 U.S. Library of Congress, Congressional Research Service, *Performance-Based Organizations in the Federal Government: A Reinvention Innovation,* by Harold Relvea, CRS Rept. 97-72GOV (Washington: CRS, 1997).

in defining the term, however, may contribute to confusion and ambiguity, not excluding Congress, when agencies or programs are considered for PBO status.[47]

The term PBO is generally described in normative language in which goals are discussed using market-based terms, with "success" being based on essentially self-defined standards. Thus, the background papers supporting the Vice President's call for PBOs throughout the government begins:

> "Government agencies need to change their incentives and internal cultures to shift from a focus on process to a focus on customers and achieving results. They need to becomc more responsive to citizens, yet account for program costs and safeguard broader public interests. This can be done by creating performance based organizations (PBOs) that set forth clear measures of performance, hold the head of the organization clearly accountable for achieving results, and grant the head of the organization authority to deviate from govcrnmentwide rules if this is needed to achieve agreed-upon results. PBOs involve structural changes as well as changes in incentives affecting federal cmployccs. . The proposal to create performance based organizations in the federal government is based on an approach used successfully in Great Britain to manage agencies more effrcicntly and cffcctivcly in a period of declining rcsourccs."[48]

As a concept, PBO advocates make little distinction in their proposals between agencies and programs. Thus, a candidate for PBO status may be the Patent and Trademark Office (PTO) in the Department of Commerce[49] or the retirement benefit services in the Office of Personnel Management." Rather than passing a general management law establishing criteria to be met as the basis for PBO status, OMB has provided the prospective candidates for PBO status with a "template" to follow in the form of a draft bill, which the department or agency is to rewrite to fit its own needs and circumstances. PBO specific bills, once approved by OMB, will be submitted to Congress. The template, or model bill. begins with the following provision:

> Sec. 2(a) "The management of [name of PBO] is vestcd in a Chief Operating Officer who shall be appointed by the Sccrctary __________ to a [3 -5]] year term and compensated without regard to chapters 33, 5 1, and 53 of Title 5, United States Code.

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47 For a discussion of the pros and cons of the performance based organization (PBO) concept, the experience of the United Kingdom with its Next Step agency performance program, and the congressional oversight role for PBOs, see: Alasdair Roberts, "Performance-Based Organizations: Assessing the Gore Plan," *Public Administration Review*, vol. 57, November/December 1997, pp. 465-78.

48 U.S. National Performance Review, Background Papers Supporting Vice President Gore's Speech on "Governing in a Balanced Budget World," March 4, 1996, p. 7.

49 U.S. Library of Congress, Congressional Research Service, *Reorganizing the Administration of Patents and Trademarks: The Government Corporation Option (H.12. 400/S.507)*, Ronald C. Moe, ed., CRS Rept. 97-447 (Washington: CRS, 1997).

50U.S. Office of Management and Budget, *Budget of the United States Government, FY 1998 Section IV: Improving Performance in a Balanced Balanced World* (Washington: GPO, 1997) p. 37.

As this provision indicates, PBOs represent a major break with the traditional organization and management of executive agencies. In this Sec. 2(a) alone, the break is substantial. In the case of the Patent and Trademark Office (PTO), if it were to become a PBO under the bill as originally introduced, instead of being headed by a commissioner appointed by the President and confirmed by the Senate at the rank of Executive Level IV and paid commensurately, the new head of the Patent and Trademark Office (or whatever name it may have in the future) will be designated, simply, chief operating officer (COO), to be appointed by the secretary of Commerce for a fixed term under a contract agreed to by the secretary. The head of the PTO will no longer be appointed by the President or be subject to the review and confirmation process by the Senate.

The COO of a PBO, under Sec. 2(a) is exempted from the provisions of chapter 33 of Title 5, which deals with appointments to the civil service, including in subchapter II of chapter 33, the oath of office; chapter 51, which concerns classification of positions; and finally chapter 53 which relates to compensation rates and performance awards. These broad exemptions may be modified by inclusion of specific provisions from those chapters in legislation creating the PBO.

A number of questions may be raised by the opening provision of the template, beginning with: Will the chief operating officer be an officer of the United States, as that term is understood in the Constitution, or an "inferior officer"? Does this distinction make a difference in practice? One of the underlying assumptions behind PBOs is that it is possible for policy decisionmaking to be separated from operating decisionmaking. In the case of the proposal to establish the PTO as a PBO, policymaking would be assigned to the secretary of Commerce while operations would be handled by the COO. Is this distinction between policy and operations a viable concept in practice? Or, will the COO, an inferior officer, in fact be the person making most agency policies? What might happen if a committee of Congress objects, for example, to the terms of the contract between the secretary and the COO and seeks to override the contract? And where will Congress fit in the policymaking and administrative oversight of PBOs?

A major thrust of the PBO exercise is to shift the basis of administration from the use of federal general management laws (e.g., the personnel acts and the Freedom of Information Act), where the burden of proof is on administrators seeking the exception, to a system of administration where there are multiple management systems with the burden of proof being placed on those seeking some uniformity in behavior, operable laws, regulations, and accountability.[51] Since the ability of Congress to influence broad executive branch administrative behavior lies largely in the quality and coverage of general management laws, a shift to agency specific management laws may result in a weakened congressional role in administrative

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51 For a listing and description of numerous federal general management laws, see: U.S. Library of Congress, Congressional Research Service, *General Management Laws: A Selective Compendium* ed Ronald C. Moe, CRS report 97-613GOV (Washington: June 23, 1997).

oversight.[52] In any event, the future role of Congress in the oversight of these PBOs may emerge as a major issue.

The point in raising these questions is not to criticize the PBO concept or its underlying political assumptions. Rather, it is to suggest that the PBO concept constitutes a major shift in the historic relationship between the President and agencies on the one hand, and Congress and agencies on the other, and that clarification of the consequences is prudent.

Conclusion

The government corporation form of federal agency is a useful option to consider when establishing or reorganizing an agency with revenue potential. It is helpful to bear in mind, however, that there is no general provision in law that defines what, precisely, government corporations are. When writing the 1945 Control Act, Congress and the executive branch simply viewed the various corporate bodies and defined them by enumeration rather than by required characteristics. This relatively unstructured approach has meant that some corporate bodies (e.g., U.S. Postal Service) are not included in the Control Act enumeration while other bodies, arguably non-corporate in function and authority (e.g., Corporation for Public Broadcasting) are listed.

There is little managerial oversight at present of government corporations as an institutional category by either the President or Congress. What oversight there is tends to be corporation specific. In the case of Congress, corporations are assigned to committees of subject-matter jurisdiction. An argument has been be made that corporations properly require both subject matter and management oversight and that the Government Corporation Control Act should be reconstituted to establish in law the characteristics of various types of corporate bodies.[53]

In the absence of a general incorporation law with specific definitions of types of corporate agencies and instrumentalities, a major appeal of the government corporation option will remain the flexibility afforded by its ambiguity in law. In recent practice, each corporation is created *sui generis* and is governed by whatever laws the designer-advocates are able to persuade lawmakers to accept. The Clinton Administration, pursuing greater design freedom, has promoted the concept of performance-based organizations (PBOs) that partake of the nomenclature, structure, and practices generally prevailing in the private sector. Government corporations are considered part of the "old bureaucratic paradigm of government," while the "reinventors" wish to avoid that paradigm and thus are attracted to business nomenclature and paradigms. Accountability of PBO leadership to political officials would be lessened, intentionally or not, through the substantial administrative exemptions (e.g., personnel laws and regulations) associated with PBO status.

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[52] *Id.*

[53] U.S. General Accounting Office, *Congress Should Consider Revising Basic Corporate Controls Laws*, GAO/PAD-83-3, (Washington: GAO, 1983).

Congress has not generally been persuaded by the PBO concept, however, and the executive branch was required to alter its bill to reorganize the Patent and Trademark Office by removing the PBO concept and terminology, and instead support a bill that would create a "wholly-owned government corporation."

The future of government corporations as a category of federal organization appears generally bright. The need for the executive branch and Congress to develop new organizational structures that take into account both the public law requirements of governmental status and the flexibility that properly accompanies corporate bodies dependent upon revenues for services will foreseeably increase rather than diminish. The managerial quality of the laws establishing corporation is a critical variable in the success or failure of a government corporation. If the conceptual basis of the law establishing a corporation is faulty, as was the case with the Synthetic Fuels Corporation in the late 1970s,[54] a government corporation may become a liability to the executive branch and face a short tenure.

If a federal government corporation is designed such that its characteristics conform with public law and governmental management principles, as discussed earlier, a corporate agency may provide a creative instrument to promote the public policy objectives of elected officials. In an important sense, a government corporation shares with a regular, appropriations-financed agency a functional standard, its purpose is to implement laws passed by Congress.

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54 Ronald C. Moe, "Government Corporations and the Erosion of Accountability: The Case of the Proposed Energy Security Corporation," *Public Administration Review, vol. 39.* November Dcccmbcr 1979, pp.566-572. Doug Bandow., "Synfucls. NoWinFuels," *New York Times*, Scptcmbcr 1, 1983, p. 25.

Federal Government Corporations

1. Commodity Credit Corporation	(15 U.S.C. 714)
2. Community Development Financial Institutions Fund	(12 U.S.C. 4703)
3. Corporation for National and Community Service*	(42 U.S.C. 12501)
4. Corporation for Public Broadcasting*	(47 U.S.C. 396)
5. Export-Import Bank	(12 U.S.C. 635)
6. Federal Crop Insurance Corporation	(7 U.S.C. 1501)
7. Federal Deposit Insurance Corporation	(12 U.S.C. 1811)
8. Federal Financing Bank	(12 U.S.C. 2281)
9. Federal Prison Industries (UNICOR)	(18 U.S.C. 4121)
10. Government National Mortgage Corporation	(12 U.S.C. 1717)
11. Legal Services Corporation*	(42 U.S.C. 2996)
12. National Credit Union Administration Central Liquidity Facility	(12 U.S.C. 1795)
13 National Passenger Railroad Corporation (AMTRAK)	(45 U.S.C. 451)
14. Overseas Private Investment Corporation	(22 U.S.C. 2191)
15. Panama Canal Commission	(22 U.S.C. 3501)
16. Pension Benefit Guaranty Corporation	(29 U.S.C. 1301)
17. Presidio Trust of San Francisco	(16 U.S.C. 460bb)
18. Resolution Trust Corporation	(12 U.S.C. 1441)
19. Rural Telephone Bank	(7 U.S.C. 942)
20. St. Lawrence Seaway Development Corporation	(33 U.S.C. 981)
21. Securities Investor Protection Corporation	(15 U.S.C. 78)
22. Tennessee Valley Authority	(16 U.S.C. 831)
23. United States Enrichment Corporation	(42 U.S.C. 2297)
24. United States Postal Service	(39 U.S.C. 101)

* These agencies do not fully conform to the this report's definition of government corporations because they do not perform commercial functions and are not self-financing. They arc enumerated, however, in the Government Corporation Control Act (3 1 U.S.C. 9101).

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104TH CONGRESS
2D SESSION

S. 2095

To promote the capacity and accountability of Government corporations and Government sponsored enterprises.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 1996

Mr. SIMON (for himself and Mr. PRYOR) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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A BILL

To promote the capacity and accountability of Government corporations and Government sponsored enterprises.

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 "Government Corporation and Government Sponsored Enterprise Standards Act".

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) ensure that Government corporations and Government sponsored enterprises—

(A) are established and conduct their operations in conformance with consistent standards as to the applicability of Federal laws; and

(B) are fully accountable for their financial soundness and programmatic activities; and

(2) provide an orderly process for privatizing selected Government corporations.

SEC. 3. DEFINITIONS.

For the purposes of this Act the term—

(1) ''Government corporation'' means an agency of the United States within the executive branch that—

(A) is designated by law to have corporate form;

(B) carries out business type operations to provide goods or services in response to economic demand; and

(C) produces revenues, potentially on a self-sustaining basis;

(2) ''Government sponsored enterprise'' or ''GSE'' means an instrumentality that—

(A) is chartered under the laws of the United States to provide specialized financial services in furtherance of public purposes;

(B) is owned wholly or in part by private equity owners; and

(C) has a relationship to the Federal Government, such as authority to borrow directly or indirectly from the Treasury of the United States, that creates a public perception of implicit Federal backing of its obligations or guaranteed securities;

(3) ''newly established wholly owned Government corporation'' means a wholly owned Government corporation which is established under a statute enacted after December 31, 1996;

(4) ''newly established transitional Government corporation'' means a transitional Government corporation which is established under a statute enacted after December 31, 1996;

(5) ''newly established Government sponsored enterprise'' means a Government sponsored enterprise which is established under a statute enacted after December 31, 1996;

(6) ''transitional Government corporation'' means a Government corporation that is intended to—

(A) operate on a profitmaking basis; and

(B) be converted to private ownership when feasible; and

(7) "wholly owned Government corporation"—

(A) means a Government corporation that is wholly owned or controlled by the Federal Government; and

(B) includes a transitional Government corporation except as otherwise provided by law.

TITLE I—CLASSIFICATIONS OF GOVERNMENT CORPORATIONS AND GSES

SEC. 101. CLASSIFICATION.

(a) IN GENERAL.—The Director of the Office of Management and Budget shall—

(1) maintain a list of all Government corporations and Government sponsored enterprises classified according to the definitions of this Act; and

(2) publish such list as a part of the annual budget of the United States Government.

(b) RECOMMENDATIONS.—The Director of the Office of Management and Budget shall make legislative recommendations to the Congress to ensure that this Act applies to entities established under statutes that are enacted or amended after December 31, 1996.

TITLE II—GENERAL PROVISIONS

SEC. 201. RESERVATION.

The Congress expressly reserves the right to alter, amend or repeal any law establishing or governing the activities of a Government corporation or Government sponsored enterprise.

SEC. 202. AFFILIATES.

Each newly established Government corporation or newly established Government sponsored enterprise may establish, acquire or control the activities of a subsidiary or other affiliate only by or under a law of the United States expressly authorizing the action.

SEC. 203. APPLICATION OF THIS ACT.

On and after the effective date of this Act no entity established under Federal law shall be a Government corporation or Government sponsored enterprise without conforming to the requirements and definitions of this Act.

TITLE III—WHOLLY OWNED GOVERNMENT CORPORATIONS

SEC. 301. APPLICABILITY.

This title applies only to newly established wholly owned Government corporations.

SEC. 302. GOVERNMENT CORPORATION CONTROL ACT.

Each wholly owned Government corporation shall be subject to the provisions of chapter 91 of title 31, United

States Code, that are applicable to wholly owned Government corporations under that Act.

SEC. 303. SUNSET.

Except as specifically provided by law, each newly established wholly owned Government corporation—

(1) shall terminate 10 years after the date on which such corporation is established; and

(2) may be extended for additional 10-year periods by the Congress.

SEC. 304. GENERAL POWERS.

(a) IN GENERAL.—In order to accomplish its statutory purposes and in addition to any other powers that may be authorized by law, each wholly owned Government corporation—

(1) may adopt, alter, and use a corporate seal, which shall be judicially noticed;

(2) may sue and be sued in its corporate name and be represented by its own attorneys in all administrative and judicial proceedings, including, with the prior approval of the Attorney General, appeals from decisions of Federal courts;

(3) may indemnify directors, officers, attorneys, agents, and employees of the corporation for liabilities and expenses relating to corporate activities;

(4) may adopt, amend, and repeal bylaws, rules, and regulations governing the manner in which its business may be conducted and the powers granted to it by law may be exercised and enjoyed;

(5) may determine the rates or prices of goods or services that it provides, subject to applicable provisions of law;

(6)(A) may acquire, purchase, lease, and hold real and personal property including patents and proprietary data, as it determines necessary in the transaction of its business, and sell, lease, grant, and dispose of such real and personal property, as it determines necessary to effectuate the purposes of this Act; and

(B) shall make purchases, contracts for the construction, maintenance, or management and operation of facilities and contracts for supplies or services, except personal services, after advertising, in such manner and at such times sufficiently in advance of opening bids, as the corporation shall determine to be adequate to ensure notice and an opportunity for competition, except that advertising shall not be required when the corporation determines that—

(i) the making of any such purchase or contract without advertising is necessary in the interest of furthering the purposes of this Act; or

(ii) advertising is not reasonably practicable;

(7) with the consent of the agency or Government concerned, may utilize or employ the services, records, facilities or personnel of any State or local Government agency or instrumentality, or voluntary or uncompensated personnel to perform such functions on its behalf as may appear desirable;

(8) may enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its business on a reimbursable basis, with any agency or instrumentality of the United States, or with any State, territory, or possession, or with any political subdivision thereof, or with any person, firm, association, or corporation;

(9) may determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to this Act and other provisions of law

specifically applicable to wholly owned Government corporations;

(10) may retain and utilize its revenues for any of the purposes of the corporation, including research and development and capital investment, and such revenues and funds of the corporation shall not be subject to apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code;

(11) may settle and adjust claims held by the corporation against other persons or parties and claims by other persons or parties against the corporation, except that for purposes of the Contract Disputes Act of 1978, the corporation shall be deemed to be the agency head with respect to contract claims arising with respect to the corporation;

(12) may exercise, in the name of the United States, the power of eminent domain for the furtherance of the official purposes of the corporation;

(13) shall have the priority of the United States with respect to the payment of debts out of bankrupt, insolvent, and decedents' estates;

(14) may define appropriate information as Government commercial information and exempt such information from mandatory release under sec-

tion 552(b)(3) of title 5, United States Code, when the corporation determines that such information, if publicly released, would harm the corporation's legitimate commercial interests or those of a third party;

(15) may obtain from the Administrator of General Services such services as the Administrator is authorized to provide to agencies of the United States, on the same basis as those services are provided to other agencies of the United States;

(16) may accept gifts or donations of services, or of property, real, personal, mixed, tangible or intangible, in aid of any purposes of this Act;

(17) may execute, in accordance with its bylaws, rules and regulations, all instruments necessary and appropriate in the exercise of any of its powers;

(18) may provide for liability insurance either by contract or by self-insurance; and

(19) shall pay any settlement or judgment entered against the corporation from the funds of the corporation and not from funds made available pursuant to section 1304 of title 31, United States Code.

(b) FEDERAL TORT CLAIMS.—Chapter 171 and section 1346(b) of title 28, United States Code, shall not apply to any claims arising from the activities of a wholly owned Government corporation.

SEC. 305. OFFICERS AND EMPLOYEES.

Officers and employees of a wholly owned Government corporation shall be officers and employees of the United States. The corporation shall appoint and fix the compensation of such officers and employees (including attorneys) and agents of the corporation as are determined necessary to effect this Act, define their authority and duties, and delegate to officers, employees, and agents such of the powers vested in the corporation as the corporation may decide, without regard to any administratively imposed limits on the number or grade of personnel, and any such officer, employee, or agent shall be subject to the supervision only of the corporation.

SEC. 306. OBLIGATIONS AND GUARANTEES.

The full faith and credit of the United States is pledged to the payment of all obligations issued or guaranteed by each wholly owned Government corporation.

SEC. 307. CONTRIBUTIONS TO RETIREMENT AND DISABILITY AND EMPLOYEES' COMPENSATION FUNDS.

(a) RETIREMENT CONTRIBUTIONS.—Each wholly owned corporation shall contribute to the Civil Service Retirement and Disability Fund established under section 8348 of title 5, United States Code, or other applicable Federal retirement fund, on the basis of annual billings as determined by the Office of Personnel Management, for the Government contribution to the Federal retirement system applicable to the corporation's employees and their beneficiaries.

(b) COMPENSATION CONTRIBUTIONS.—Each wholly owned corporation shall contribute to the Employees' Compensation Fund established under section 8147 of title 5, United States Code, on the basis of annual billings as determined by the Secretary of Labor, for the benefit payments made from such Fund on account of the corporation's employees.

(c) ADMINISTRATIVE COSTS.—The annual billings under subsections (a) and (b) shall include a statement of the fair portion of the cost of administration of the respective funds, which shall be paid into the Treasury as miscellaneous receipts.

SEC. 308. FINANCIAL STATEMENTS.

Except as otherwise provided by law, each wholly owned Government corporation shall—

(1) maintain a system of accounts and publish its financial statements annually on the basis of generally accepted accounting principles; and

(2) be subject to audit on the basis of auditing standards that are consistent with the private sector's generally accepted commercial auditing standards.

SEC. 309. NEW ACTIVITIES.

No wholly owned Government corporation shall engage in new types of business activities before such activities are included in the annual budget program that is approved by the Congress.

SEC. 310. REVENUES FOREGONE.

There are authorized to be appropriated to each wholly owned Government corporation each year such sums as are determined by the corporation to be equal to revenues foregone by the corporation as a result of the operation of laws that direct the corporation, for reasons of national policy to provide goods or services at prices or rates below a reasonable estimate of the cost of production.

SEC. 311. BUDGET LIMITATIONS.

The funds, accounts, receipts and outlays of wholly owned Government corporations are exempt from any general budget limitation imposed by statute upon expenditures and net lending (budget outlays) of the United States, sequestration order or discretionary spending limit, including application of the Balanced Budget and Emergency Deficit Control Act of 1985 or similar laws.

SEC. 312. PAYMENTS IN LIEU OF TAXES.

(a) EXEMPTION.—Wholly owned Government corporations, including their franchises, property and income, shall be exempt from all taxation imposed in any manner or form by any State, county, municipality or local taxing authority, or any subdivision thereof, except—

(1) as otherwise provided by law; and

(2) each such corporation shall make payments to State and local governments in lieu of property taxes upon real property of the corporation.

(b) PAYMENTS.—The corporation shall make payments described under subsection (a)(2) in the amounts, at the times and upon the terms that the corporation determines appropriate, and the corporation's determination in these matters shall be final.

TITLE IV—TRANSITIONAL GOVERNMENT CORPORATIONS

SEC. 401. APPLICABILITY.

This title applies only to newly established transitional Government corporations.

SEC. 402. SUNSET.

Each transitional Government corporation shall have succession for a period of 5 years from the date of enactment of the statute establishing such corporation, unless otherwise provided by law.

SEC. 403. PRIVATIZATION PLANNING.

(a) STRATEGIC PLAN.—No later than 4 years after the date of enactment of the statute establishing such corporation, and no later than 4 years after the date of any extension of the statute establishing such corporation, each transitional Government corporation shall prepare a strategic plan for privatizing the corporation and submit such plan to the President and Congress. The plan shall provide that proceeds from the return of capital to the United States shall be deposited in the general fund of the Treasury.

(b) CONSIDERATION OF ALTERNATIVE MEANS OF TRANSFERRING OWNERSHIP.—The plan shall include consideration of alternative forms of privatization, including consideration of the relative benefits and costs of complete or partial sale of corporate assets or of the going concern in 1 or more units to 1 or more privately owned entities established under the laws of a State or of the District of Columbia.

(c) CONSIDERATION OF FACTORS.—The plan shall include consideration of relevant factors including assessment whether privatization will—

(1) result in a return to the United States at least equal to the net present value of the corporation;

(2) not result in ownership, control or domination of the assets or of the acquiring entity or entities, as the case may be, by an alien, a foreign corporation, or a foreign government;

(3) not be inimical to the health and safety of the public or the common defense and security; and

(4) contribute to the competitive structure of the relevant market.

(d) EVALUATION AND RECOMMENDATION.—The plan shall evaluate the relative merits of the alternatives considered and the estimated return on the Government's investment in the corporation achievable through each alternative. The plan shall include the corporation's recommendation on the preferred means of privatization.

(e) GAO EVALUATION.—No later than 60 days after the submission of the plan to the Congress, the Comptroller General shall submit a report to Congress evaluating the extent to which—

(1) the privatization plan would result in any ongoing obligation or undue cost to the Federal Government; and

(2) the revenues gained by the Federal Government under the privatization plan would represent at least the net present value of the corporation.

TITLE V—GOVERNMENT SPONSORED ENTERPRISES

SEC. 501. APPLICABILITY.

This title applies only to newly established Government sponsored enterprises.

SEC. 502. SUNSET.

Each Government sponsored enterprise shall have succession for a period of 10 years, subject to review by the Congress and extension for additional periods of 10 years, unless otherwise provided by law. The Secretary of the Treasury shall consider the applicable sunset period in determining the maturities of obligations that each Government sponsored enterprise may issue. The Secretary of the Treasury shall issue any regulations that the Secretary determines to be appropriate for the implementation of this title.

SEC. 503. FINANCIAL SAFETY AND SOUNDNESS.

(a) REQUIRED PROVISIONS.—The statute establishing any Government sponsored enterprise shall address issues of financial safety and soundness by including requirements that provide for—

(1) effective Federal supervision of financial safety and soundness;

(2) adequate capital for the GSE; and

(3) the GSE to achieve and maintain a high investment grade rating, as prescribed in subsection (b), throughout the existence of the GSE.

(b) RATING.—

(1) IN GENERAL.—Not later than 1 year after the effective date of the statute establishing each new GSE subject to this Act, the Secretary of the Treasury shall, for each such GSE, contract with 2 nationally recognized statistical rating organizations to—

(A) assess the likelihood that the GSE will not be able to meet its obligations from its own resources with an assumption that there is no recourse to any implicit Government guarantee and to express that likelihood as a traditional credit rating; and

(B) review the rating of the GSE as frequently as the Secretary determines is appropriate, but not less than annually.

(2) REIMBURSEMENT.—A Government sponsored enterprise shall reimburse the Secretary of the Treasury for the full cost of activities under this title, as determined by the Secretary of the Treasury. Such reimbursement shall be credited to the account of the Secretary of the Treasury.

(3) COMMENTS.—The Secretary of the Treasury shall—

(A) submit comments to the Congress on any difference between the evaluation of the rating organizations and that of the Secretary, with special attention to capital adequacy; and

(B) report on any actions the Secretary determines appropriate to ensure that each GSE continuously maintains a high investment grade rating.

(4) REQUIREMENT.—Each such GSE shall achieve and maintain throughout the existence of the GSE 1 of the 2 highest investment grade ratings awarded by each statistical rating organization described in paragraph (5). The Secretary of the Treasury may waive the requirements of this paragraph by published order on such terms and conditions and for such periods of times as the Secretary determines appropriate.

(5) DEFINITION.—For the purposes of this section, the term "nationally recognized statistical rating organization" means—

(A) any entity effectively recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for the purposes of the capital rules for broker-dealers; or

(B) an entity similar to an entity described under subparagraph (A), which is designated by the Secretary of the Treasury.

(c) REPORTS.—The Comptroller General of the United States and the Office of Management and Budget each shall report to the Congress upon the adequacy of provisions for effective Federal supervision of safety and soundness, including the adequacy of capital standards, contained in any bill to create a Government sponsored enterprise. Each report shall also recommend provisions to be included in such bill to assure compliance with subsection (b).

SEC. 504. PUBLIC PURPOSES.

(a) REQUIRED PROVISIONS.—The statute establishing any Government sponsored enterprise shall prescribe the public purposes of the Government sponsored enterprise in sufficiently specific terms to enable the Congress to make an oversight determination of the accomplishment of such purposes.

(b) PLAN FOR REMOVAL OF GOVERNMENT SPONSORSHIP.—

(1) IN GENERAL.—No later than 1 year after the enactment of the statute establishing a Government sponsored enterprise, and no later than 1 year after the date of any extension of the statute establishing such Government sponsored enterprise, the Federal agency responsible for supervision of the Government sponsored enterprise, or the Secretary of the Treasury with respect to Government sponsored enterprises that are not subject to supervision by such a Federal agency, shall—

(A) prepare a strategic plan for the removal of Government sponsorship from the Government sponsored enterprise; and

(B) submit such plan to the President and the Congress.

(2) CONTENT OF PLAN.—The strategic plan shall set standards and propose milestones for the Government sponsored enterprise to accomplish its statutory mission and for the removal of Government sponsorship.

(3) REVISION OF PLAN.—The Federal agency or the Secretary of the Treasury, as the case may be, shall update and revise a strategic plan at least every 3 years.

(4) GSE VIEWS.—To the extent that the Government sponsored enterprise holds views different from those of the Federal agency or the Secretary, the Government sponsored enterprise shall—

(A) prepare a strategic plan for the removal of Government sponsorship from the Government sponsored enterprise; and

(B) submit such plan to the President and the Congress.

(c) ULTRA VIRES ACTS OF A GOVERNMENT SPONSORED ENTERPRISE.—The programs, activities, and transactions of each Government sponsored enterprise shall be subject to review by the Federal agency responsible for supervision of the financial safety and soundness of the Government sponsored enterprise, or by the Secretary of the Treasury with respect to Government sponsored enterprises that are not subject to financial supervision by such a Federal agency. The Federal agency or the Secretary of the Treasury, as the case may be, shall report at least annually to the President and the Congress on any transactions or undertakings which the agency or

Secretary determines were carried out or made without authority of law. Such acts shall be null and void except to the extent that the Congress enacts legislation to authorize any such act.

SEC. 505. ANNUAL REPORT ON IMPACT OF BORROWING BY GOVERNMENT SPONSORED ENTERPRISES ON PUBLIC DEBT.

(a) GENERAL REQUIREMENT.—The Secretary of the Treasury shall annually prepare and submit to the Congress a report assessing the financial safety and soundness of the activities of all Government sponsored enterprises and the impact of the operations of such corporations on Federal borrowing.

(b) ACCESS TO RELEVANT INFORMATION.—

(1) INFORMATION FROM GSES.—Each Government sponsored enterprise shall—

(A) provide full and prompt access to the Secretary to its books and records; and

(B) promptly provide any other information requested by the Secretary.

(2) INFORMATION FROM SUPERVISORY AGENCIES.—In conducting the studies under this section, the Secretary of the Treasury may request information from, or the assistance of, any Federal depart-

ment or agency authorized by law to supervise the activities of any Government sponsored enterprise.

(3) CONFIDENTIALITY OF INFORMATION.—

(A) IN GENERAL.—The Secretary of the Treasury shall determine and maintain the confidentiality of any book, record, or information made available under this subsection in a manner that the Secretary determines appropriate for the material submitted by the Government sponsored enterprise involved.

(B) EXEMPTION FROM PUBLIC DISCLOSURE REQUIREMENTS.—The Department of the Treasury shall be exempt from section 552 of title 5, United States Code, with respect to any book, record, or information made available under this subsection and determined by the Secretary to be confidential under subparagraph (A).

(C) PENALTY FOR UNAUTHORIZED DISCLOSURE.—Any officer or employee of the Department of the Treasury shall be subject to the penalties set forth in section 1906 of title 18, United States Code, if—

(i) within the scope of employment, such officer or employee has possession of or access to any book, record, or information made available under this subsection and determined by the Secretary to be confidential under subparagraph (A); and

(ii) such officer or employee discloses the material in any manner other than—

(I) to an officer or employee of the Department of the Treasury; or

(II) pursuant to the exception under section 1906 of title 18, United States Code.

(c) ASSESSMENT OF RISK.—

(1) IN GENERAL.—In assessing the financial safety and soundness of the activities of Government sponsored enterprises, and the impact of the activities of such enterprises on Federal borrowing, the Secretary of the Treasury shall quantify the risks associated with each Government sponsored enterprise. In quantifying such risks, the Secretary shall determine—

(A) the volume and type of securities outstanding which are issued or guaranteed by each Government sponsored enterprise;

(B) the capitalization of each Government sponsored enterprise; and

(C) the degree of risk involved in the operations of each Government sponsored enterprise due to factors such as credit risk, interest rate risk, management and operations risk, and business risk.

(2) PUBLICLY AVAILABLE INFORMATION.—The Secretary shall also report on the quality and timeliness of information available to the public and the Federal Government concerning the extent and nature of the activities of Government sponsored enterprises and the financial risk associated with such activities.

(d) ASSESSMENT OF IMPACT.—In assessing the impact on Federal borrowing, the Secretary shall report upon the impact of the issuance or guarantee of securities by Government sponsored enterprises on—

(1) the rate of interest and amount of discount offered on obligations issued by the Secretary each year; and

(2) the marketability of such obligations.

(e) DATE FOR SUBMISSION OF REPORT.—The report required by subsection (a) shall be submitted to the Congress no later than January 1 of the first calendar year beginning after the date of the enactment of this section, and no later than each January 1 thereafter.

SEC. 506. AUDITS.

(a) IN GENERAL.—Each Government sponsored enterprise shall have an annual independent audit made of its financial statements by an independent public accountant in accordance with generally accepted auditing standards. In conducting an audit under this subsection, the independent public accountant shall determine and report on—

(1) whether the financial statements of the Government sponsored enterprise are presented fairly in accordance with generally accepted accounting principles; and

(2) each transaction or undertaking which the auditor believes was carried out or made without authority of law.

(b) AUDIT BY COMPTROLLER GENERAL.—

(1) IN GENERAL.—The programs, activities, receipts, expenditures, and financial transactions of each Government sponsored enterprise shall be subject to audit by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General. The representatives of the General Accounting Office shall—

(A) have access to such books, accounts, financial records, reports, files, and such other papers, things, or property belonging to or in use by the GSE and necessary to facilitate the audit; and

(B) be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians.

(2) REPORT TO CONGRESS.—A report on each such audit shall be submitted by the Comptroller General to the Congress. The GSE shall reimburse the General Accounting Office for the full cost of any such audit as billed therefor by the Comptroller General.

(3) ACCESS TO INFORMATION.—To carry out this subsection, the representatives of the General Accounting Office shall have access, upon request to the GSE or any auditor for an audit of the GSE under subsection (a), to any books, accounts, financial records, reports, flies, or other papers, things, or property belonging to or in use by the GSE and used in any such audit and to any papers, records, files, and reports of the auditor used in such an audit.

(4) PROGRAM AUDITS.—At least every 3 years the Comptroller General shall conduct program audits of each Government sponsored enterprise under this section. Each audit and report by the Comptrol-

ler General shall include specifically each transaction or undertaking which the Comptroller General believes was carried out or made without authority of law.

SEC. 507. SHAREHOLDER RIGHTS.

To the extent consistent with Federal law, shareholders in an investor-owned Government sponsored enterprise shall have the rights relative to the GSE and its management that are accorded to shareholders under the Business Corporation Act of the District of Columbia.

SEC. 508. JURISDICTION.

All securities issued or guaranteed by a Government sponsored enterprise shall be subject to the laws administered by the Securities and Exchange Commission.

SEC. 509. EQUITY SECURITIES.

No equity securities issued by a Government sponsored enterprise shall be lawful investments for—

(1) any institution with deposits or other liabilities insured or otherwise guaranteed by an agency of the Federal Government; or

(2) any Government Sponsored Enterprise other than the Government sponsored enterprise that issues the equity securities.

SEC. 510. FEDERAL INVESTMENTS.

No securities issued or guaranteed by a Government sponsored enterprise shall be lawful investments or accepted as security for any fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority and control of the United States or any officer or officer thereof.

SEC. 511. TAXATION.

Each Government sponsored enterprise, including its activities, holdings and income, and income from securities issued or guaranteed by a Government sponsored enterprise, shall be subject to all taxation imposed by Federal, State, and local governments and taxing authorities to the same extent as other business organizations, and income from their securities, are taxed.

SEC. 512. REPORT TO THE CONGRESS.

A Government sponsored enterprise shall submit an annual report to the Congress including—

(1) a list including the name and address of each contractor, consultant, agent, or employee paid by the Government sponsored enterprise to engage in—

(A) grassroots organizing or campaigning;

(B) public relations, media consulting, or image advertising; or

(C) lobbying, including the direct and indirect lobbying of the Congress;

(2) an itemization of all costs associated with activities described in paragraph (1) whether incurred by the Government sponsored enterprise or by any of its contractors, consultants, agents, or employee listed under such paragraph, including entertainment expenses, travel expenses, advertising costs, salaries, billing rates and the total amount billed for services;

(3) a description of any lobbying of the Congress or the executive branch by employees, board members, or officers of the Government sponsored enterprise;

(4) a description of any effort by the Government sponsored enterprise or its agents to encourage others to lobby the Congress or the executive branch;

(5) a list of all charitable donations paid by the Government sponsored enterprise on behalf of Members of Congress or members of the executive branch;

(6) a list of the salaries and other compensation (including the present value of stock options) and

benefits paid to the officers and board members of the Government sponsored enterprise; and

(7) a list of all Government sponsored enterprise employees who have been employed by either the Congress or the Federal Government in the 5 years preceding the report, and such employees' salary prior to being employed by the Government sponsored enterprise and the salary of each such employee.

TITLE VI—GOVERNMENT CORPORATION CONTROL ACT

SEC. 601. DEFINITIONS.

(a) GOVERNMENT CORPORATION.—Section 9101(1) of title 31, United States Code, is amended to read as follows:

"(1) 'Government corporation' means a wholly owned Government corporation and a Government sponsored enterprise.".

(b) GOVERNMENT SPONSORED ENTERPRISE.—Section 9101(2) of title 31, United States Code, is amended to read as follows:

"(2) 'Government sponsored enterprise' means the Federal Home Loan Banks, the Farm Credit Banks, the Banks for Cooperatives of the Farm Credit System, and such other Government sponsored enterprises as the Secretary of the Treasury may designate from time to time.''.

(c) WHOLLY OWNED GOVERNMENT CORPORATION.—Section 9101(3) of title 31, United States Code, is amended by adding at the end:

''(O) The National Railroad Passenger Corporation.

''(P) The Federal Deposit Insurance Corporation.

''(Q) The National Credit Union Administration Central Liquidity Facility.

''(R) The Rural Telephone Bank.

''(S) The Resolution Trust Corporation.''.

SEC. 602. AUDITS.

Section 9105 of title 31, United States Code, is amended to read as follows:

''§ 9105. Audits

''(a) The programs, activities, receipts, expenditures and financial transactions of each wholly owned Government corporation shall be audited annually by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General. The representatives of the General Accounting Office shall have access to such books, accounts, financial records, reports, files and such other papers, things, or property belonging to or in use by the corporation and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. The representatives of the General Accounting Office shall have access, upon request to the corporation or any auditor for an audit of the corporation under this section, to any books, financial records, reports, files or other papers, things, or property belonging to or in use by the corporation and used in any such audit and to papers, records, files, and reports of the auditor used in such an audit. In conducting such audit, the Comptroller General may make a contract, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), for professional services with a firm or organization for a temporary period or special purpose.

"(b) The Comptroller General of the United States shall make a report to the Congress on each audit conducted under this section. The report to the Congress shall contain such comments and information as the Comptroller General determines necessary to inform the Congress of the financial operations and condition of the corporation, together with such recommendations as the Comptroller General determines advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking, observed, or reviewed in the course of the audit which, in the opinion of the Comptroller General, has been carried out or made without authority of law. A copy of each such report shall be furnished to the President, the Secretary of the Treasury, and to the corporation at the time submitted to the Congress.

''(c) A Government corporation shall reimburse the Comptroller General of the United States for the cost of the audit as determined by the Comptroller General. Such reimbursement shall be credited to the account of the Comptroller General. An audit under this section is in place of an audit of the financial transactions of a Government corporation the Comptroller General is required to make in reporting to the Congress or the President under another law.''.

SEC. 603. FORMER MIXED-OWNERSHIP GOVERNMENT CORPORATIONS.

Sections 9103–9105 of title 31, United States Code, shall not apply to wholly owned government corporations that formerly were designated mixed-ownership corporations under the Government Corporation Control Act, except as otherwise provided by law.

SEC. 604. ACCOUNTS AND OBLIGATIONS.

(a) ACCOUNTS.—Section 9107(c) of title 31, United States Code, is amended—

(1) in paragraph (2) by striking ''mixed-ownership Government corporation'' and inserting ''Government sponsored enterprise''; and

(2) in paragraph (3) by striking ''Federal Intermediate Credit Banks, the Central Banks for Cooperatives, the Regional Banks for Cooperatives, or the Federal Land Banks'' and inserting ''Government sponsored enterprises''.

(b) OBLIGATIONS.—Section 9108(d)(1) of title 31, United States Code, is amended by striking ''mixed-ownership Government corporation'' and inserting ''Government sponsored enterprise''.

TITLE VII—SEPARABILITY

SEC. 701. SEPARABILITY.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

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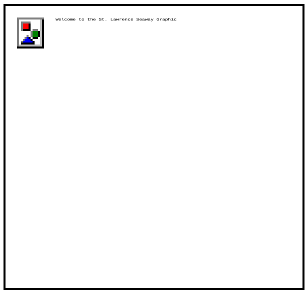

A History of the Great Lakes Seaway System

The modern St. Lawrence Seaway dates back to 1959, when the construction of this herculean navigation project was finally completed by the United States and Canada. This milestone marked the beginning of deep-draft navigation by large ocean-going ships sailing between the Great Lakes and the Atlantic Ocean, and heralded a new era in North American maritime transportation. Any account of the Seaway story would be incomplete, however, without a retrospective look at the events and forces that shaped the making of the Seaway.

The Welland Canal

The first major navigation project in what today is the Seaway was the Welland Canal. It links Lakes Erie and Ontario, and overcomes the obstacle of the Niagara Falls. This facility, located in the Canadian province of Ontario, was first opened to shipping by Canada on November 7, 1829. Work on the canal was begun in 1824 to compete with the famous Erie Canal in New York State that was opened a year later.

Heavy vessel traffic and increases in the size of commercial ships led to the rebuilding of the Welland Canal three times--the last time in 1932.

Construction of the fourth Welland Canal to cross the Niagara Peninsula began in 1913. It cost Canada approximately $249 million to erect this 26-mile-long canal, which includes eight locks (three of which are twinned) that are capable of handling vessels with a maximum beam of 78 feet and length of 740 feet. These dimensions set the standard for the Seaway locks that were later built on the St. Lawrence River.

The Soo Locks

Another major navigation project that today is part of the 2,342-mile Great Lakes-Seaway system is concentrated in the St. Mary's River, connecting Lakes Superior and Huron. This area is bounded by Sault Ste. Marie, Michigan, and Saulte Ste. Marie, Ontario, and collectively is referred to as the "Soo." Here, in 1855, the State of Michigan built the first Soo lock and charged tolls to the vessels that used the facility.

Improvements to the Soo facility were made in the ensuing years, including two new and larger locks. In 1881, the State donated its Soo facilities to the U.S., and toll charges were dropped. The Canadian Soo Lock, on the Ontario side of the canal, served commercial shipping up until 1978 when its operation was taken over by Parks Canada. The lock had been constructed in 1895 for approximately $6 million.

The 20th Century ushered in an exceedingly active period of modern U.S. lock construction at the Soo that featured four new parallel facilities operated and maintained by the U.S. Army Corps of Engineers. The first built was the Davis Lock and North Canal, opened on October 21, 1914, and costing $4.7 million. Five years later, the Sabin Lock, costing $1.7 million, was opened. On July 11, 1943, construction of the $12.7 million MacArthur Lock was completed.

The fourth and largest navigation facility built by the Corps of Engineers at the Soo was the $34.8-million Poe Lock. It was opened on June 26, 1969. Its large dimensions (1200' x 110') gave rise in the early 1970s to the many 1000-foot-long, inter-lake bulk freighters (nicknamed "supercarriers") that now sail throughout the four upper Great Lakes.

An Idea Is Born

The idea for "a seaway" dates back to 1892, when Minnesota Congressman John Lind sponsored a Congressional resolution to provide for a joint U.S.-Canadian investigation into the possibility of a deep-draft water route from the head of Lake Superior to the Atlantic. The resolution succeeded and in 1895, the U.S. and Canadian governments appointed the Deep Waterways Commission to report on all possible routes for a deep waterway connection between the Great Lakes and the Sea. The Commission concluded that both the St. Lawrence River and the Mohawk-Hudson routes were feasible. This was the first -- and for nearly half a century the last -- major victory for the proponents of a seaway.

The Boundary Waters Treaty of 1909 between the U.S. and Canada stated that all boundary waters "shall forever continue to be free and open for the purposes of commerce" to the inhabitants and vessels of both countries. The treaty explicitly said that either nation may charge tolls for the use of canals within its own territory," provided tolls apply equally to citizens and vessels of both countries. The treaty also established the International Joint Commission to approve projects that might affect the natural level or flow of boundary waters.

In 1921, the International Joint Commission issued a report recommending that Canada and the U.S. enter into a treaty for improving the St. Lawrence River between Montreal and Lake Ontario; that the Seaway include the Welland Canal; and that construction costs be apportioned on the basis of benefits. A joint power and navigation project was recommended. Discussions -- and arguments -- about such a treaty consumed most of the next decade.

In 1932, Canada's Prime Minister, R. B. Bennett, and President Herbert Hoover came to grips with the Seaway issue and the Hoover-Bennett Treaty was signed by the two heads of state -- a treaty to build a seaway to a depth of 27 feet, making the U.S. responsible for completing work from Lake Superior to Lake Erie; Canada to be in charge of work in its national section; and both nations to share in the work and cost for the International Rapids section of the St. Lawrence River. When the treaty came up for a ratification vote in the Senate in 1934, it was defeated.

Opposition to the treaty was strong, particularly from competing railroads, private utilities, the coal mining industry and East and Gulf Coast ports. It was not until 1940 when President Franklin D. Roosevelt called attention to "a Great Lakes Seaway," saying that "along with its benefits to national defense, (the Seaway) will contribute to the peacetime welfare of a multitude of laborers, small businessmen, homeowners and farmers."

It took three years more before the Senate actually turned its active attention once again to the Hoover-Bennett Treaty but again it failed to pass. And there the matter rested until the second half of the century, when, in the early 1950s, great new iron ore fields were discovered in Canada's Labrador wilderness -- an iron ore source comparable to the discovery of the great Mesabi Range in northern

Minnesota.

New Rationales

The St. Lawrence waterway was soon seen as the logical way to carry the ore from Labrador to U.S. and Canadian steel mills. The fact of increased upbound cargoes of iron ore to balance the downbound cargoes of grain also helped demonstrate the Seaway's value. Militarily, too, a submarine-free access from ore field to mill was cited as being substantially in the best interests of the national defense. A lot of people now, as a result of the Labrador ore discovery, were beginning to pay close, positive attention to the Seaway.

A new Seaway bill was introduced into Congress in 1951, but was tabled by the House Public Works Committee. By this time, Canada had decided to move ahead on its own. It created the St. Lawrence Seaway Authority, empowered -- either on its own, or in cooperation with the United States -- to build and operate a Seaway from Montreal to Lake Erie.

A new wave of concern swept Washington. Still, Seaway proponents in the United States, including President Harry Truman, felt that a Canadian Seaway was better than no Seaway at all. Congress became alarmed, realizing that tolls paid by American shippers for use of the Seaway would cover most of the cost, but Canada would control and own the Seaway -- an access into the heart of the American nation. Chief spokesman for the Seaway in the House of Representatives was John A. Blatnik, a Democratic-Farm-Labor Congressman from Duluth, Minnesota.

Despite Congressman Blatnik's hard work and the support of President Truman, the Senate in June 1952 again failed to ratify the Seaway treaty. The vote was 43 against and 40 in favor.

A Canadian Seaway it was to be -- or so it seemed, until Dwight D. Eisenhower came into office. President Eisenhower supported U.S. participation in the Seaway. In the U.S. Senate, Senator Alexander Wiley (R-Wisc.) and in the House, Congressman George A. Dondero (R-Mich.), introduced virtually identical legislation stating that the U.S. would share in the construction of the international section of the Seaway.

U.S. Participation is Approved

On May 13, 1954, the Wiley-Dondero Act (the Seaway Act) was signed into law, following favorable votes of 241-158 in the House and 51-33 in the Senate. And so, after several previous defeats in the Congress and after a number of Canadian delays earlier in the century, a joint U.S.-Canadian Seaway was at last a reality. The fight had been won!

The Seaway Act authorized U.S. participation in the navigation project and established the Saint Lawrence Seaway Development Corporation as the U.S. agency to work with a Canadian counterpart (the St. Lawrence Seaway Authority) in the construction, operation, maintenance and development of the water route. The legislation also contemplated that the Seaway would pay its own way through joint U.S.-Canadian tolls for transit of the Seaway, and it required the Corporation to pay back construction costs, with interest, as well as pay for its overall operations and maintenance costs.

From 1954 up until early 1959, most of the Seaway Corporation's activities were concentrated on building the U.S. portion of the Seaway between Massena, New York and Lake Erie.

The approximate cost of the navigation project was just over $470 million, of which Canada paid $336.5 million and the U.S. about $133.8 million. (The power portion of the project cost some $600 million and was shared equally by the two nations.)

On September 24, 1954, the Seaway Corporation, then under the direction and supervision of the Secretary of Defense, designated the U.S. Army Corps of Engineers as design and contracting agency for the U.S. project. Actual construction began in January 1955. In 1956, the Congress approved $256.9 million for the Corps to deepen Great Lakes connecting channels to 27 feet, thereby opening the port cities of the Great Lakes to deep draft ocean commerce, turning them into true world ports.

A year before the Seaway opened, in 1958, the Seaway Corporation was transferred from the Department of Defense to the Department of Commerce. Six months later, on January 29, 1959, the U.S. and Canadian Seaway entities entered into their first joint agreement on tolls. Tolls were levied both on St. Lawrence River locks and the Welland Canal, with a 29%-U.S., 71%-Canada division of St. Lawrence River revenues. The split was based upon the anticipated costs to be borne by each nation in the construction of the Seaway. Tolls on the all-Canadian Welland Canal were not shared, and were suspended in 1962.

Deep-Draft Shipping Begins

Although the Seaway was officially dedicated on June 26-27, 1959, in Montreal and Massena, New York, the waterway was actually opened to traffic some three months earlier, on April 25 -- to iron out whatever "kinks" might exist in the complex system of locks before it officially came into existence. Included among the dignitaries at the opening ceremonies in June were Her Majesty Queen Elizabeth II representing Canada, and U.S. President Dwight D. Eisenhower and Vice President Richard M. Nixon.

Tonnage through the new Seaway in its first year was 18.7 million metric tons. It topped 20 million in 1961; 30 million in 1964; 40 million in 1966; and 50 million in 1973. The all-time record of 57.4 million was set in 1977.

In October 1966, the U.S. Department of Transportation was formed and the Seaway Corporation was brought under the policy direction and supervision of the Secretary of Transportation. Canada initiated toll negotiations shortly thereafter, with the outcome that tolls were not increased on the St. Lawrence as Canada had desired, but the Canadian revenue share on the St. Lawrence was increased from 71% to 73%. The U.S. also agreed to a lockage fee assessment on the Welland. This Welland revenue was retained by Canada.

The Merchant Marine Act of 1970 relieved the Seaway Corporation of the requirement that it pay interest on its construction debt, and established seacost status for the entire system. For the first time, the Great Lakes-Seaway system was given equal status with other coastal ranges and/or maritime regions in the nation.

Later that year, the Rivers and Harbors Act of 1970 created the "Great Lakes-St. Lawrence Seaway Navigation Season Extension Demonstration Program." This gave impetus to an 8-year effort which established a multi-agency Great Lakes/Seaway Winter Navigation Board to investigate the economic benefits and engineering feasibility of extending the shipping season in the system.

During 1976, Canada had again initiated talks concerning toll increases and on March 20, 1978, the U.S. and Canada exchanged diplomatic notes formalizing a new tolls agreement which restored the original St. Lawrence revenue split and incrementally raised tolls over a three-year period on both the St. Lawrence and Welland Canal (tolls replaced lockage fees on the Welland). This was the first toll increase since the Seaway opened.

On Sept. 31, 1979, Congressional authorization for the 8-year Great Lakes/St. Lawrence Seaway Navigation Season Extension Demonstration Program expired. Directed by the Winter Navigation Board which was chaired by the U.S. Army Corps of Engineers, the Board's program proved the technical and economic feasibility of an extended navigation season, but results of the program's environmental feasibility remained inconclusive. Overall appropriations at the end of the program totalled $13.6 million. The Seaway Corporation administered approximately 25% of that total.

A two-year phase-in of higher Seaway tolls was put into effect at the start of the 1982 navigation season. In the fall of that year, Congress passed the U.S. Department of Transportation FY'83 appropriations bill which contained a section cancelling the Corporation's remaining $110 million construction debt.

Silver Anniversary

The one-billionth metric ton of cargo passed through the Seaway in early June 1983. The following year, the Seaway celebrated its silver anniversary. Among the special activities were: a Presidential proclamation declaring 1984 as "The Year of the Seaway" and June 27 as "Seaway Day;" and on June 26 the U.S. Postal Service and the Canada Post Corporation jointly issued commemorative postage stamps marking the anniversary.

At the start of 1985, the Seaway Corporation launched a major marketing program to enhance Seaway utilization and respond to Great Lakes interests. A new marketing office was established, new marketing services were introduced, the first of a series of annual overseas trade missions was organized, and various trade seminars were hosted. All of these changes came about as a result of the Corporation's 1984 five-goal action plan that entailed cost containment, worldwide marketing, targeting cargoes, improved government relations, and expanded information sharing. All of these were industry recommendations.

New Act Rebates U.S. Tolls

Enactment of the Water Resources Development Act of 1986 had a major impact on U.S. Seaway tolls and Seaway Corporation financing. The Act, which took effect April 1, 1987, effectively eliminated U.S. Seaway tolls by establishing a new system of U.S. toll rebates. Under this system, U.S. tolls continued to be collected but the Seaway Corporation was required to turn these funds over to the Treasury Department for deposit in the new Harbor Maintenance Trust Fund. The Secretary of Treasury would then rebate these funds to the users.

A second major change due to the Act was a newly designated source of funds for the Seaway Corporation. Previously the Seaway Corporation had derived all of its operations and maintenance funds from its share of tolls charged on the joint Montreal to Lake Ontario section. As a result of the Act, the Seaway Corporation became dependent upon appropriations from the new Harbor Maintenance Trust Fund for approximately 90 percent of its budget for operations and maintenance.

The other 10 percent came from Corporation reserves. The Fund was created by the Act which established the national harbor maintenance tax on foreign cargoes handled at all U.S. ports.

Seaway tolls on the Montreal to Lake Ontario section remained frozen at the 1983 level through 1988. In 1986 however, the Canadian Seaway Authority increased its tolls by 15% on the Welland Canal section to offset revenue deficits. The Authority subsequently increased tolls on the Welland Canal an average of 8% in 1987 and 1988.

Another major event in 1986 was the Canadian government announcement of the start of a $175 million, seven-year project to rehabilitate the Welland Canal. The project was financed by a direct appropriation from the Canadian Treasury and hence not necessary to be repaid through the collection of tolls.

Seaway tolls for 1989 and 1990 were increased 4.5% per year for the combined Montreal to Lake Ontario and Welland Canal sections. The hike was needed to keep pace with inflation. Most notable in the tariff were new incentives for government aid and lumber cargoes. Government aid cargo was exempted from tolls and lumber charges were cut 50%.

On June 26, 1989, the Seaway Corporation unveiled its new Emergency Response Plan at Massena, N.Y. for oil spills, hazardous substance spills and vessel collisions in the St. Lawrence River. The plan was presented to more than 100 local community leaders, public safety officials, New York state officials, and news media. Major elements of the new plan entailed the use of a river computer model developed at Clarkson University, Potsdam, N.Y., annual updating, and simulated exercises.

In mid 1990, the Seaway Corporation announced the results of its Seaway System cost competitiveness study performed by O'Connell Associates of Lancaster, Pa. It showed that the Seaway was especially competitive for the shipment of steel, heavy lift, and project cargoes.

Incentive Tolls Tested

Also in mid 1990, the Seaway Corporation and the Seaway Authority of Canada unveiled a new three-month test program for "incentive tolls." Discounts and rebates were given for new business cargoes in order to stimulate vessel traffic through the system. The test produced 700,000 metric tons of new cargo. Seaway officials were so pleased that they made the incentive tolls program a permanent feature of the Seaway Tariff of Tolls for 1991 through 1995.

Toll incentives between 1991-93 also included a 65 per cent reduction of general cargo tolls for owners of U.S. and Canadian Great Lakes vessels used primarily for grain who elected to move general cargo on their vessels when grain shipments were not available. Besides these new innovations, overall tolls for 1991-93 were raised 5.75% to help Canada keep pace with its inflation rate.

Navigation Firsts

Three significant Seaway navigation firsts occurred in 1991:

- On May 5, Seaway Corporation officials at Eisenhower Lock greeted the NOVOPOLOTSK as it launched its company's new regular liner service into the Seaway. The ship was owned by Baltic Shipping Co. of Leningrad, and made calls on the ports of Detroit, Milwaukee, and

Burns Harbor, Ind. This ship represented part of a monthly service of two cargo vessels sailing between the Great Lakes and Northern Europe. This was the first new Seaway liner service since the late 1970s.

- On June 14, the Seaway Corporation and The St. Lawrence Seaway Authority announced the increase in the Seaway's maximum vessel draft from 26' to 26' 1". This was the first such increase in 21 years and Seaway officials estimated the deeper draft would permit each transiting ship to carry up to 100 extra metric tons of cargo.
- On July 23, the NERCO Coal Corporation announced it signed a deal to ship 30,000 metric tons of Powder River Basin coal through the Great Lakes Seaway System. The export, which took place August 19, was the first direct shipment of low-sulfur Western coal to move through the Seaway to an international market.

In early 1992, the Seaway Corporation and the U.S. Coast Guard entered into an agreement to conduct joint screenings of foreign-flagged vessels entering the St. Lawrence Seaway. The program now takes place in Massena, N.Y. and Montreal, Canada, for compliance with U.S. safety and environmental protection laws.

During the summer of 1992, the Seaway Corporation announced its plans to take full advantage of the Digital Global Positioning System (DGPS) technology to improve Seaway ship safety through the development of new navigational aid positioning and vessel tracking systems. This was to be done with the assistance of the Department of Transportation's Volpe National Transportation Systems Center.

Significant Economic Impact

The Seaway Corporation unveiled in October of the same year the results of its first study of the Seaway System's economic impact on the U.S. Among the major benefits of Seaway maritime commerce were: the creation of 44,628 jobs, and the generation of $1.9 billion in annual personal income.

Following the start of the 1993 shipping season, the Seaway Corporation and the Seaway Authority of Canada added a new incentive toll rate for coal shipments on the Seaway. This change reduced the toll on coal by 55 cents per ton in order to stimulate increased coal shipments -- especially low sulfur coal from the western United States.

In June, two U.S.-flagged vessels transported 36,000 metric tons of U.S. grain destined for St. Petersburg, Russia. The two shipments marked the first U.S.-flag vessel transit through the St. Lawrence Seaway since 1989. The two vessels, J.L. MAUTHE and AMERICAN MARINER carried the grain to Montreal where it was then loaded onto a Mormac Marine Group U.S. flag ocean tanker destined for St. Petersburg.

At the end of November 1993, the Seaway agencies announced a one-year freeze on tolls for the 1994 shipping season. This was the first toll freeze since 1985.

Seaway Tonnage Rebounds

When the 1993 shipping season ended, the Seaway registered its first total tonnage increase in five years. Tonnage rose 2% to 31.9 million metric tons.

Early in 1994, the Seaway agencies agreed to reduce the tolls charged on steel slab shipments by 50 cents per ton, so as to stimulate this growing import trade.

At the start of the 1994 shipping season, the maximum allowable vessel beam (width) through Seaway locks was extended from 76 to 78 feet. Also, the maximum allowable draft for a vessel was increased from 26 feet to 26 feet, 3 inches. That summer, the maximum vessel length for ships transiting Seaway locks was extended from 730 to 740 feet. These changes were made by the Seaway agencies to make fuller use of existing facilities and to stimulate increased vessel and cargo traffic. The potential increase in vessel carrying capacity as a result of the combined beam/draft/length improvements was: 1,200 - 1,500 tons for grain, and 1,600 - 1,900 tons for steel or iron ore.

Effective October 1, 1994, Congress waived the requirement for collecting and rebating U.S. tolls. The change to the Water Resources Development Act of 1986 was made possible by an amendment to the FY '95 Transportation Appropriations. As a result, thereafter, Canada alone assessed and collected Seaway tolls.

The shipping season ended on a high note as Seaway tonnage registered the highest annual increase since 1970 -- a total of 38.4 million metric tons which was a gain of 20% over 1993. Seaway officials attributed the excellent performance to their toll freezes and incentive tolls, to their international marketing efforts and to the overall improvement in the regional economy.

Toll Freezes

In December 1994, when the Seaway agencies toll negotiations reached an impasse, Seaway tolls for 1995 were again frozen at the 1993 levels.

The length of the 1995 shipping season set a new record of 280 days. The waterway tied 1980 for the earliest opening ever (March 24) and closed December 28 -- the third latest closing in Seaway history.

In the spring, the Seaway Corporation released the results of its newest updated Seaway Economic Impact Study -- a follow-up to the one done in 1992. The newest study showed 12% increase in jobs created (49,946) and a 14% increase in annual personal income generated ($2.2 billion).

Organizational Changes

Structural change proposals affecting both the U.S. and Canadian Seaway agencies were floated in 1995. The U.S. Department of Transportation, in its department-wide restructuring proposal, called for the Seaway Corporation to spin off DOT as an independent agency. In Canada, the Minister of Transport announced plans to commercialize the Seaway Authority and have it be privately operated. Both changes were still pending at year's end 1995.

On December 5, 1995, the U.S. Coast Guard Great Lakes Pilotage office was officially transferred to the Seaway Corporation. Only the responsibilities for pilot licensing and vessel accident inspections remained under the Coast Guard.

Tonnage during the 1995 shipping season represented the third consecutive annual increase. The total rose 269,000 metric tons to 38.7 million.

The numerous initiatives of the Seaway agencies during the mid 1980s and early 1990s, appeared to have had a significant impact on the upsurge in Seaway cargo traffic by the mid 1990s. Those initiatives contributing most: the international marketing programs, navigational improvements allowing the transit of more cargo per ship, and toll incentives and freezes making the Seaway much more cost competitive.

Seaway Reform Issues

During 1996, Seaway reform issues dominated the news both in the U.S. and Canada. For example:

- In the U.S. in March, the Seaway Corporation was named by Vice President Gore as one of eight federal agency candidates to become a Performance Based Organization (PBO) -- an Administration "reinventing government" initiative designed to make the federal government more efficient through the use of business techniques used by companies in the private sector. During the year, the Seaway Corporation developed a detailed proposal for the conversion, which included the establishment of new performance measurements and a new performance-based funding system. In the Department of Transportation's FY '97 Appropriations Bill, the Congress recognized the Seaway Corporation's PBO proposal and directed the General Accounting Office to evaluate the proposal and submit a report by May 1997.
- In Canada in 1996, a Seaway commercialization initiative was announced by the Canadian government and was made part of the Canada Marine Act. The Seaway initiative called for the St. Lawrence Seaway Authority to be operated by a private user group of nine companies, with the government retaining ownership of the Canadian Seaway's physical assets. The bill was passed by the House of Commons but failed to emerge from the Senate.
- In addition to the two unilateral initiatives above, a binational Seaway reform effort also emerged in August 1996 when the U.S. Secretary of Transportation and the Canadian Minister of Transport formed a joint working group to examine the possibilities of greater cooperation between the two Seaway agencies in areas such as the elimination of operational redundancies and the feasibility of replacing the existing two Seaway agencies with one, binational agency.

These key U.S. Great Lakes Pilotage events occurred in 1996:

- On April 22, the U.S. District for the District of Columbia ruled in favor of the Department of Transportation 's 1995 decision to transfer oversight responsibilities for Great Lakes Pilotage from the U.S. Coast Guard to the Seaway Corporation. The decision was subsequently appealed by the pilotage groups.
- On Sept. 25, the Seaway Corporation completed the first full pilot's rate review since 1987, and proposed a rate increase for pilots in the three U.S. Great Lakes pilotage districts. The rate increase went into effect following a 45-day comment period and consultations with Canada. This was the first compensation increase for U.S. Great Lakes pilotage since an interim raise in 1992.

Fleet Inventory

As part of its annual Seaway overseas trade mission programs, the Seaway Corporation in March 1996 led a delegation of 19 maritime and business executives to Oslo, Norway; Copenhagen, Denmark; and The Hague, The Netherlands.

In May of 1996, the Seaway Corporation released the findings of its first-ever Seaway fleet inventory analysis, which found that more than 14,500 commercial vessels, or 41 percent of the world's merchant fleet in excess of 300 gross registered tons, were capable of transiting Seaway locks and channels. Further, the study showed that the existing Seaway-sized ocean and Great Lakes bulk fleet was rapidly aging and that by 2005, the number of Seaway-sized ships 20 years old or younger would shrink substantially. As a result, the Seaway Corporation launched a campaign to encourage newbuildings and retrofittings at Seaway-max dimensions.

Seaway tolls in 1996 were frozen for the third consecutive year at the 1993 levels. Total cargo tonnage moved through the Montreal-Lake Ontario Seaway section in 1996 reached 38.1 million metric tons. General cargo in particular posted a 25 percent gain due to sharp increases in manufactured iron and steel and steel slabs. The 1996 navigation season ran from March 29 through December 27.

Significant 1997 events included:

- On February 10, 1997, the Seaway Corporation issued a final rule implementing the rate increases for U.S. Great Lakes pilots that were proposed the previous fall.
- Seaway Corporation Administrator Gail C. McDonald, on April 11, 1997, submitted her resignation, which was effective May 1. Her deputy, David G. Sanders, was named Acting Administrator on July 14.

PBO Legislative Proposal

- On May 5, 1997, U.S. Secretary of Transportation Rodney E. Slater submitted a legislative proposal to the Congress to establish the Seaway Corporation as a Performance Based Organization or PBO. Subsequently, the Seaway Corporation staff briefed Great Lakes members of Congress and a Congressional fact-finding committee (the House Committee on Reform and Oversight's Subcommittee on Government Management, Information and Technology in a hearing held July 8). Also, in May, the General Accounting Office issued its study of the Seaway PBO idea and concluded that "the Seaway Corporation would be a low risk pilot because it has a small budget, business-like operations and already has some flexibilities that would be available to a PBO." However, by year-end, no member of Congress had introduced legislation to bring about the Seaway PBO.
- The Seaway Corporation and the Seaway Authority of Canada announced in June 1997 that a 2.5 percent Seaway toll increase would begin August 1, and that Welland Canal lockage fees would be eliminated in 1998. Subsequently, however, the Seaway agencies agreed to hold off the toll increase and lockage fee elimination. This marked the fourth consecutive season that tolls remained unchanged.
- In August, the Seaway Corporation sponsored the first systemwide Great Lakes Seaway Domestic Trade Mission, with visits by top Corporation executives to 15 U.S. and Canadian Great Lakes port cities. Hundreds of Seaway users and potential users attended the special events at each site, which were aimed at heightening public awareness of Seaway assets and issues, and boosting trade.
- On September 18, 1997, the 420-passenger German cruise ship, C. COLUMBUS, made its maiden voyage through the U.S. locks at Massena, N.Y. The event marked the first time a

foreign cruise ship had entered the Seaway System since 1975. The ship cost $69 million to build, and was designed to maximum Seaway dimensions.

- Between October 16 and 25, the Seaway Corporation sponsored its 18th overseas trade mission. This successful mission included return visits to Hamburg, Germany and Johannesburg, South Africa, and was targeted primarily at vessel owners and operators.

Significant 1998 Events included:

- On March 5, the Secretary of Transportation reassigns Great Lakes Pilotage functions back to the U.S. Coast Guard in response to a U.S. Court of Appeals decision that overrules a lower court's decision favoring the 1995 transfer of pilotage oversight to SLSDC.
- In July, SLSDC earns international quality (ISO 9002) recognition for its vessel safety and environmental inspection service which is conducted in cooperation with the U.S. Coast Guard and Canada's Seaway officials.
- On June 1, Canada unilaterally increases Seaway tolls 2% across-the-board -- the first Seaway toll increase since 1993.
- On Sept. 29, President Clinton nominated Albert S. Jacquez to be SLSDC's eighth administrator.
- Effective Oct. 1, Canada abolishes SLSDC's counterpart -- the St. Lawrence Seaway Authority in Ottawa -- and transfers its functions to a new not-for-profit entity known as the St. Lawrence Seaway Management Corporation in Cornwall, Ontario. The change is made in conformance with the 1998 Canada Marine Act.

These were some of the historical highlights for 1999:

- Throughout the year, SLSDC and many Great Lakes ports observed the 40th anniversary of the Great Lakes St. Lawrence Seaway System. SLSDC developed a system-wide anniversary logotype and slogan, published a commemorative booklet for stakeholders, and hosted a rededication ceremony on June 27 in Massena, N.Y., which was attended by Congressional, industry and local community leaders.
- On April 5, the U.S. Secretary of Transportation dedicated SLSDC’s newly-upgraded vessel traffic control center at Eisenhower Lock, Massena, N.Y. The center now features a fully-automated, binational computer system call the Seaway Traffic Management System (TMS). This state-of-the-art system now provides a seamless source of vessel information covering all Seaway sections. The new technology improves vessel-tracking capabilities on the Seaway, and makes maritime travel safer and more efficient.
- On July 1, President Clinton’s appointment of Albert S. Jacquez to be SLSDC’s eighth administrator for a 7-year term, was confirmed by the U.S. Senate.
- Also in July, SLSDC gained international quality recognition (ISO 9002 certification) for three more of its customer services: Vessel Traffic, Administration, and Marine. In November, members of the SLSDC employee teams that helped the corporation to obtain the certification were presented team awards by the U.S. Secretary of Transportation.
- In August, the U.S. Department of Transportation submitted its second legislative proposal to the Congress to establish SLSDC as a Performance Based Organization (PBO). To date, the Congress has not acted on the proposal. The first one was submitted in 1997.
- The revival of the international cruise business on the Great Lakes Seaway System was

accelerated during the 1999 navigation season. The German C. COLUMBUS resumed service for the third consecutive year and had six voyages. Newcomers to the system were: LE LEVANT of France, and SEBOURN PRIDE of Britain.

- A record number of U.S. Great Lake ports (9) earned SLSDC's Seaway Port Pacesetter Awards for registering l998 tonnage increases in international cargo. For the first time this year, eligibility for the award was extended to include U.S. Great Lakes port terminals, and seven earned the award. Administrator Jacquez personally presented award plaques to the majority of the winners at local ceremonies throughout the year.
- Cargo moved through the Montreal to Lake Ontario (Mo-LO) section of the Seaway during 1999 totaled 36.5 million metric tons. This was a 7% decrease from 1998. While the Seaway's highest volume commodity (grain) was up 4.7% to 6.9 million metric tons, iron and steel cargoes fell 35% to 3.9 million metric tons. This decrease was due mainly to anti-dumping complaints against foreign steel imports filed by numerous U.S. companies. For the same reason, total Mo-LO commercial vessel transits fell one-half percent.

Seaway Corporation Administrators

Lewis G. Castle * * * * * * * * * * July 2, 1954 --- June 4, 1960

M. W. Ottershagen * * * * * * * * March 29, 1961 --- December 30, 1961

Joseph H. McCann * * * * * * * * January 1, 1962 --- April 4, 1969

David W. Oberlin * * * * * * * * * August 11, 1969 --- February 27, 1983

James L. Emery * * * * * * * * * * November 21, 1983 --- November 21, 1990

Stanford E. Parris * * * * * * * * * March 21, 1991 --- April 15, 1995

Gail C. McDonald * * * * * * * * *January 2, 1996 --- April 11, 1997

*David G. Sanders (Acting)** * * * * July 14, 1997 --- January 3, 1999

*Albert S. Jacquez** * * * * * * * * *January 4, 1999 --- Present

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SLSDC Advisory Board Members, 1954-99

	Home Town	Term Served
Edward J. Noble Chairman, Finance Committee, ABC Paramount Theaters, & Chairman, Beechnut Lifesavers	New York, NY	1954-1958
John C. Beukema President, Great Lakes Harbors Association	N. Muskegon, MI	1954-1960
Harry C. Brockel Port Director	Milwaukee, WI	1954-1968
Kenneth M. Lloyd Legal Counsel, Mahoning Valley Industrial Council	Youngstown, OH	1954-1968
Hugh Moore Founder, Dixie Cup Co.	Easton, PA	1954-1960
Frank A. Augsbury, Jr. Chairman, Hall Corp. Shipping Ltd.	Ogdensburg, NY	1959-1960
Peter M. Butler	South Bend, IN	1961
N.R. Danielian President, Great Lakes Association	Washington, D.C.	1961-1966
Thomas P. McMahon	Buffalo, NY	1961-1967
M.W. Ottershagen Former SLSDC Administrator	Chicago, IL	1961-1968
Miles F. McKee Secretary, Sand Products Corp.	Detroit, MI	1962-1968
Jacob L. Bernheim Attorney, Michael, Best & Friedrich	Milwaukee, WI	1969-1984
Dr. Foster S. Brown President Emeritus, St. Lawrence University	Canton, NY	1969-1983
William W. Knight, Jr. Retired Port Chairman	Toledo, OH	1969-1979
Joseph N. Thomas Attorney, Dyerly & Cubby	Gary, IN	1969-1979
Conrad M. Fredin Attorney	Duluth, MN	1983-1992
L.S. Reimers Farm Owner	Carrington, ND	1983-1992
John R. Wall Retired Executive, Republic Steel	Brathenal, OH	1984
Virgil E. Brown President, Board of Commissioners, Cuyahoga County	Cleveland, OH	1984-1994
Leo C. McKenna Financial Analyst	New York, NY	1985-1994
Randolph J. Agley CEO, Talon Corp.	Grosse Point Farms, MI	1988-1994

Anthony S. Earl Former Governor of Wisconsin	Madison, WI	1996-
Jay C. Ehle Former Chairman, Port of Cleveland	Rocky River, OH	1996-
George D. Milidrag Founder, Engineering Technology Ltd.	Clarkson, MI	1996-
Vincent Sorrentino Attorney, Hurley & Hewner	Buffalo, NY	1996-
William L. Wilson Research Fellow, University of Minnesota	Minneapolis, MN	1996-

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Sec.

Sec. 9101. Definitions

In this chapter -

(1) ''Government corporation'' means a mixed-ownership Government corporation and a wholly owned Government corporation.

(2) ''mixed-ownership Government corporation'' means -

(A) the Central Bank for Cooperatives.

(B) the Federal Deposit Insurance Corporation.

(C) the Federal Home Loan Banks.

(D) the Federal Intermediate Credit Banks.

(E) the Federal Land Banks.

(F) the National Credit Union Administration Central Liquidity Facility.

(G) the Regional Banks for Cooperatives.

(H) the Rural Telephone Bank when the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a)).

(I) the Financing Corporation.

(J) the Resolution Trust Corporation.

(K) the Resolution Funding Corporation.

(3) ''wholly owned Government corporation'' means -

(A) the Commodity Credit Corporation.

(B) the Community Development Financial Institutions Fund.

(C) the Export-Import Bank of the United States.

(D) the Federal Crop Insurance Corporation.

(E) Federal Prison Industries, Incorporated.

(F) the Corporation for National and Community Service.

(G) the Government National Mortgage Association.

(H) the Overseas Private Investment Corporation.

(I) the Pennsylvania Avenue Development Corporation.
(J) the Pension Benefit Guaranty Corporation.
(K) the Rural Telephone Bank until the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a)).
(L) the Saint Lawrence Seaway Development Corporation.
(M) the Secretary of Housing and Urban Development when carrying out duties and powers related to the Federal Housing Administration Fund.
(N) the Tennessee Valley Authority.
((O) Repealed. Pub. L. 104-134, title III, Sec. 3117(a), Apr. 26, 1996, 110 Stat. 1321-350.)
(P) the Panama Canal Commission.
(Q) the Alternative Agricultural Research and Commercialization Corporation.

31 USC Sec. 9102 01/05/99

Sec. 9102. Establishing and acquiring corporations

-STATUTE-

An agency may establish or acquire a corporation to act as an agency only by or under a law of the United States specifically authorizing the action.

-SOURCE-

-MISC1-

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9102	31:869(a).	Dec. 6, 1945, ch. 557, Sec. 304(a), 59 Stat. 602.

The word ''agency'' is substituted for ''officer or agency of the Federal Government or by any Government corporation'' and ''agency or instrumentality of the United States'' because of section 101 of the revised title, for consistency, and because a Government corporation is an ''instrumentality of the United States Government''. The word ''establish'' is substituted for ''created, organized'' to eliminate unnecessary words. The words ''on or after December 6, 1945'' are omitted as executed. The words ''law of the United States'' are substituted for ''Act of Congress'' for consistency.

31 USC Sec. 9103 01/05/99

Sec. 9103. Budgets of wholly owned Government corporations

(a) Each wholly owned Government corporation shall prepare and submit each year to the President a business-type budget in a way, and before a date, the President prescribes by regulation for the budget program.

(b) The budget program for each wholly owned Government corporation shall -

(1) contain estimates of the financial condition and operations of the corporation for the current and following fiscal years and the condition and results of operations in the last fiscal year;

(2) contain statements of financial condition, income and expense, and sources and use of money, an analysis of surplus or deficit, and additional statements and information to make known the financial condition and operations of the corporation, including estimates of operations by major activities, administrative expenses, borrowings, the amount of United States Government capital that will be returned to the Treasury during the fiscal year, and appropriations needed to restore capital impairments; and

(3) provide for emergencies and contingencies and otherwise be flexible so that the corporation may carry out its activities.

(c) The President shall submit the budget programs submitted by wholly owned Government corporations (as changed by the President) as part of the budget submitted to Congress under section 1105 of this title. The President thereafter may submit changes in a budget program of a corporation at any time.

Sec. 9104. Congressional action on budgets of wholly owned Government corporations

-STATUTE-

(a) Congress shall -

(1) consider budget programs for wholly owned Government corporations the President submits;

(2) make necessary appropriations authorized by law;

(3) make corporate financial resources available for operating and administrative expenses; and

(4) provide for repaying capital and the payment of dividends.

(b) This section does not -

(1) prevent a wholly owned Government corporation from carrying out or financing its activities as authorized under another law;

(2) affect section 26 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831y); or

(3) affect the authority of a wholly owned Government corporation to make a commitment without fiscal year limitation.

Sec. 9105. Audits

-STATUTE-

(a)(1) The financial statements of Government corporations shall be audited by the Inspector General of the corporation appointed under the Inspector General Act of 1978 (5 U.S.C. App.), or under other Federal law, or by an independent external auditor, as determined by the Inspector General or, if there is no Inspector General, by the head of the corporation.

(2) Audits under this section shall be conducted in accordance with applicable generally accepted government auditing standards.

(3) Upon completion of the audit required by this subsection, the person who audits the statement shall submit a report on the audit to the head of the Government corporation, to the Chairman of the Committee on Government Operations of the House of Representatives, and to the Chairman of the Committee on Governmental Affairs of the Senate.

(4) The Comptroller General of the United States -

(A) may review any audit of a financial statement conducted under this subsection by an Inspector General or an external auditor;

(B) shall report to the Congress, the Director of the Office of Management and Budget, and the head of the Government corporation which prepared the statement, regarding the results of the review and make any recommendation the Comptroller General of the United States considers appropriate; and

(C) may audit a financial statement of a Government corporation at the discretion of the Comptroller General or at the request of a committee of the Congress.

An audit the Comptroller General performs under this paragraph shall be in lieu of the audit otherwise required by paragraph (1) of this subsection. Prior to performing such audit, the Comptroller General shall consult with the Inspector General of the agency which prepared the statement.

(5) A Government corporation shall reimburse the Comptroller General of the United States for the full cost of any audit conducted by the Comptroller General under this subsection, as determined by the Comptroller General. All reimbursements received under this paragraph by the Comptroller General of the United States shall be deposited in the Treasury as miscellaneous receipts.

(b) Upon request of the Comptroller General of the United States, a Government corporation shall provide to the Comptroller General of the United States all books, accounts, financial records, reports, files, workpapers, and property belonging to or in use by the Government corporation and its auditor that the Comptroller General of the United States considers necessary to the performance of any audit or review under this section.

(c) Activities of the Comptroller General of the United States under this section are in lieu of any audit of the financial transactions of a Government corporation that the Comptroller General is required to make under any other law.

31 USC Sec. 9106 01/05/99

Sec. 9106. Management reports

-STATUTE-

(a)(1) A Government corporation shall submit an annual management report to the Congress not later than 180 days after the end of the Government corporation's fiscal year.

(2) A management report under this subsection shall include -

(A) a statement of financial position;

(B) a statement of operations;
(C) a statement of cash flows;
(D) a reconciliation to the budget report of the Government corporation, if applicable;
(E) a statement on internal accounting and administrative control systems by the head of the management of the corporation, consistent with the requirements for agency statements on internal accounting and administrative control systems under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (Public Law 97-255);
(F) the report resulting from an audit of the financial statements of the corporation conducted under section 9105 of this title; and
(G) any other comments and information necessary to inform the Congress about the operations and financial condition of the corporation.

(b) A Government corporation shall provide the President, the Director of the Office of Management and Budget, and the Comptroller General of the United States a copy of the management report when it is submitted to Congress.

31 USC Sec. 9107 01/05/99

Sec. 9107. Accounts

-STATUTE-

(a) With the approval of the Comptroller General, a Government corporation may consolidate its cash into an account if the cash will be expended as provided by law.

(b) The Secretary of the Treasury shall keep the accounts of a Government corporation. If the Secretary approves, a Federal reserve bank or a bank designated as a depositary or fiscal agent of the United States Government may keep the accounts. The Secretary may waive the requirements of this subsection.

(c)(1) Subsection (b) of this section does not apply to maintaining a temporary account of not more than $50,000 in one bank.

(2) Subsection (b) of this section does not apply to a mixed-ownership Government corporation when the corporation has no capital of the Government.

(3) Subsection (b) of this section does not apply to the Federal Intermediate Credit Banks, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, or the Federal Land Banks. However, the head of each of those banks shall report each year to the Secretary the names of depositaries where accounts are kept. If the Secretary considers it advisable when an annual report is received, the Secretary may make a written report to the corporation, the President, and Congress.

31 USC Sec. 9108 01/05/99

Sec. 9108. Obligations

-STATUTE-

(a) Before a Government corporation issues obligations and offers obligations to the public, the Secretary of the Treasury shall prescribe -

(1) the form, denomination, maturity, interest rate, and conditions to which the obligations will be subject;

(2) the way and time the obligations are issued; and

(3) the price for which the obligations will be sold.

(b) A Government corporation may buy or sell a direct obligation of the United States Government, or an obligation on which the principal, interest, or both, is guaranteed, of more than $100,000 only when the Secretary approves the purchase or sale. The Secretary may waive the requirement of this subsection under conditions the Secretary may decide.

(c) The Secretary may designate an officer or employee of an agency to carry out this section if the head of the agency agrees.

(d)(1) This section does not apply to a mixed-ownership Government corporation when the corporation has no capital of the Government.

(2) Subsections (a) and (b) of this section do not apply to the Rural Telephone Bank (when the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a))), the Federal Intermediate Credit Banks, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, and the Federal Land Banks. However, the head of each of those banks shall consult with the Secretary before taking action of the kind described in subsection (a) or (b). If agreement is not reached, the Secretary may make a written report to the corporation, the President, and Congress on the reasons for the Secretary's disagreement.

31 USC Sec. 9109 01/05/99

Sec. 9109. Exclusion of a wholly owned Government corporation from this chapter

-STATUTE-

When the President considers it practicable and in the public interest, the President shall include in the budget submitted to Congress under section 1105 of this title a recommendation that a wholly owned Government corporation be deemed to be an agency (except a corporation) under chapter 11 of this title and for fiscal matters. If Congress approves the recommendation, the corporation is deemed to be an agency (except a corporation) under chapter 11 and for fiscal matters for fiscal years beginning after the fiscal year of approval and is not subject to this chapter. The corporate entity is not affected by this section.

31 USC Sec. 9110 01/05/99

Sec. 9110. Standards for depository institutions holding securities of a Government-sponsored corporation for customers

-STATUTE-

(a) The Secretary shall prescribe by regulation standards for the safeguarding and use of obligations that are government securities described in subparagraph (B) or (C) of section 3(a)(42) of the Securities Exchange Act of 1934. Such regulations shall apply only to a depository institution that is not a government securities broker or a government securities dealer and that holds such obligations as fiduciary, custodian, or otherwise for the account of a customer and not for its own account. Such regulations shall provide for the adequate segregation of obligations so held, including obligations which are purchased or sold subject to resale or repurchase.

(b) Violation of a regulation prescribed under subsection (a) shall constitute adequate basis for the issuance of an order under section 5239(a) or (b) of the Revised Statutes (12 U.S.C. 93(a) or (b)), section 8(b) or 8(c) of the Federal Deposit Insurance Act, section 5(d)(2) or 5(d)(3) of the Home Owners' Loan Act of 1933, section 407(e) or 407(f) (of the National Housing Act, or section 206(e) or 206(f) of the Federal Credit Union Act. Such an order may be issued with respect to a depository institution by its appropriate regulatory agency and with respect to a federally insured credit union by the National Credit Union Administration.

(c) Nothing in this section shall be construed to affect in any way the powers of such agencies under any other provision of law.

(d) The Secretary shall, prior to adopting regulations under this section, determine with respect to each appropriate regulatory agency and the National Credit Union Administration Board, whether its rules and standards adequately meet the purposes of regulations to be promulgated under this section, and if the Secretary so determines, shall exempt any depository institution subject to such rules or standards from the regulations promulgated under this section.

(e) As used in this subsection -

(1) ''depository institution'' has the meaning stated in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act and also includes a foreign bank, an agency or branch of a foreign bank, and a commercial lending company owned or controlled by a foreign bank (as such terms are defined in the International Banking Act of 1978).

(2) ''government securities broker'' has the meaning prescribed in section 3(a)(43) of the Securities Exchange Act of 1934.

(3) ''government securities dealer'' has the meaning prescribed in section 3(a)(44) of the Securities Exchange Act of 1934.

(4) ''appropriate regulatory agency'' has the meaning prescribed in section 3(a)(34)(G) of the Securities Exchange Act of 1934.

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 19 - SAINT LAWRENCE SEAWAY

CHAPTER 19 - SAINT LAWRENCE SEAWAY

Section

33 USC Sec. 981 01/05/99

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
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Sec. 981. Creation of Saint Lawrence Seaway Development Corporation

There is hereby created, subject to the direction and supervision of the Secretary of Transportation, a body corporate to be known as the Saint Lawrence Seaway Development Corporation (hereinafter referred to as the ''Corporation'').

33 USC Sec. 982 01/05/99

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 19 - SAINT LAWRENCE SEAWAY

Sec. 982. Management of Corporation; appointment of Administrator; terms; vacancy; Advisory Board; establishment; membership; meetings; duties; compensation and expenses

(a) The management of the corporation shall be vested in an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of seven years. Any Administrator appointed to fill a vacancy in that position prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(b) There is established the Advisory Board of the Saint Lawrence Seaway Development Corporation which shall be composed of five members appointed by the President, by and with the advice and consent of the Senate, not more than three of whom shall belong to the same political party. The Advisory Board shall meet at the call of the Administrator, who shall require it to meet not less often than once each ninety days; shall review the general policies of the Corporation, including its policies in connection with design and construction of facilities and the establishment of rules of measurement for vessels and cargo and rates of charges or tolls; and shall advise the Administrator with respect thereto. Members of the Advisory Board shall receive for their services as members compensation of not to exceed $50 per diem when actually engaged in the performance of their duties, together with their necessary traveling expenses while going to and coming from meetings.

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 19 - SAINT LAWRENCE SEAWAY

Sec. 983. Functions of Corporation

(a) Construction of deep-water navigation works in Saint Lawrence River; conditions precedent

The Corporation is authorized and directed to construct, in United States territory, deep-water navigation works substantially in accordance with the ''Controlled single stage project, 238-242'' (with a controlling depth of twenty-seven feet in channels and canals and locks at least eight hundred feet long, eighty feet wide, and thirty feet over the sills), designated as ''works solely for navigation'' in the joint report dated January 3, 1941, of the Canadian Temporary Great Lakes-Saint Lawrence Basin Committee and the United States Saint Lawrence Advisory Committee, in the International Rapids section of the Saint Lawrence River together with necessary dredging in the Thousand Islands section; and to operate and maintain such works in coordination with the Saint Lawrence Seaway Authority of Canada, created by chapter 24 of the acts of the fifth session of the Twenty-first Parliament of Canada 15-16, George VI (assented to December 21, 1951): Provided, That the Corporation shall not proceed with the aforesaid construction unless and until -

(1) the Saint Lawrence Seaway Authority of Canada, provides assurances satisfactory to the Corporation that it will complete the Canadian portions of the navigation works authorized by section 10, chapter 24 of the acts of the fifth session of the Twenty-first Parliament of Canada 15-16, George VI, 1951, as nearly as possible concurrently with the completion of the works authorized by this section;

(2) the Corporation has received assurances satisfactory to it that the State of New York, or an entity duly designated by it, or other licensee of the Federal Energy Regulatory Commission, in conjunction with an appropriate agency in Canada, as nearly as possible concurrently with the navigation works herein authorized, will construct and complete the dams and power works approved by the International Joint Commission in its order of October 29, 1952 (docket 68) or any amendment or modification thereof.

(b) Coordination of activities regarding power projects

The Corporation shall make necessary arrangements to assure the coordination of its activities with those of the Saint Lawrence Seaway Authority of Canada and the entity designated by the State of New York, or other licensee of the Federal Energy Regulatory Commission, authorized to construct and operate the dams and power works authorized by the International Joint Commission in its order of October 29, 1952 (docket 68) or any amendment or modification thereof.

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
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Sec. 984. General powers of Corporation

(a) For the purpose of carrying out its functions under this chapter the Corporation -

(1) shall have succession in its corporate name;

(2) may adopt and use a corporate seal, which shall be judicially noticed;

(3) may sue and be sued in its corporate name;

(4) may adopt, amend, and repeal bylaws, rules, and regulations governing the manner in which its business may be conducted and the powers vested in it may be exercised;

(5) may make and carry out such contracts or agreements as are necessary or advisable in the conduct of its business;

(6) shall be held to be an inhabitant and resident of the northern judicial district of New York within the meaning of the laws of the United States relating to venue of civil suits;

(7) may appoint and fix the compensation, in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, of such officers, attorneys, and employees as may be necessary for the conduct of its business, define their authority and duties, and delegate to them such of the powers vested in the Corporation as the Administrator may determine;

(8) may acquire, by purchase, lease, condemnation, or donation such real and personal property and any interest therein, and may sell, lease, or otherwise dispose of such real and personal property, as the Administrator deems necessary for the conduct of its business;

(9) shall determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed and paid, subject to provisions of law specifically applicable to Government corporations;

(10) may retain toll revenues for purposes of eventual reinvestment in the Seaway.

(11) may provide services and facilities necessary in the maintenance and operation of the seaway, including but not limited to providing, at reasonable prices, services to vessels using the seaway and to visitors to the seaway, but not to include overnight housing accommodations for visitors;

(12) may participate with the Saint Lawrence Seaway Authority of Canada, or its designee, in the ownership and operation of a toll bridge company: Provided, That the United States' portion of the revenue from the tolls charged to the users of any toll bridge operated under this section shall be applied solely to the cost of the bridge and approaches, including maintenance and operation, amortization of principal and interest, as established by the Secretary of the Treasury; and

(13) shall be credited with amounts received from any of the activities authorized by clauses (10) and (11) of this subsection.

(13) shall accept such amounts as may be transferred to the Corporation under section 9505(c)(1) of title 26, except that such amounts shall be available only for the purpose of operating and maintaining those works which the Corporation is obligated to operate and maintain under subsection (a) of section 983 of this title.

(b) Amounts credited under subsection (a)(12) of this section are available to pay any obligation or expense of the Corporation under this chapter, except as specifically provided in subsection (a)(11) of this section.

33 USC Sec. 984a 01/05/99

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
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Sec. 984a. Repealed. June 28, 1955, ch. 189, Sec. 12(c)(11), 69 Stat. 181

Section, act Aug. 26, 1954, ch. 935, ch. VIII, Sec. 801, 68 Stat. 818, authorized Administrator to place not more than four positions in grades 16, 17, or 18 of General Schedule established by Classification Act of 1949.

33 USC Sec. 985 01/05/99

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
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Sec. 985. Bonds; issuance; maturity; redemption; interest; purchase of obligations by Secretary of the Treasury

(a) To finance its activities, the Corporation may issue revenue bonds payable from corporate revenue to the Secretary of the Treasury. The total face value of all bonds so issued shall not be greater than $140,000,000. Not more than fifty per centum of the bonds may be issued during any one year. Such obligations shall have maturities agreed upon by the Corporation and the Secretary of the Treasury, not in excess of fifty years. Such obligations may be redeemable at the option of the Corporation before maturity in such manner as may be stipulated in such obligations, but the obligations thus redeemed shall not be refinanced by the Corporation. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Corporation to be issued hereunder and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include any purchases of the Corporation's obligations hereunder.

(b) Effective as of October 21, 1970, the obligations of the Corporation incurred under subsection (a) of this section shall bear no interest, and the obligation of the Corporation to pay the unpaid interest which has accrued on such obligations is terminated.

33 USC Sec. 985a 01/05/99

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
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Sec. 985a. Cancellation of bonds issued under section 985

Notwithstanding any other provision of law, any bond issued under section 985 of this title, is hereby canceled together with the obligation to pay such bond.

33 USC Sec. 986 01/05/99

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 19 - SAINT LAWRENCE SEAWAY

Sec. 986. Payments to States and local governments in lieu of taxes; tax exemption of Corporation

The Corporation is authorized to make payments to State and local governments in lieu of property taxes upon property which was subject to State and local taxation before acquisition by the Corporation. Such payments may be in the amounts, at the times, and upon the terms the Corporation deems appropriate, but the Corporation shall be guided by the policy of making payments not in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens are placed upon the State or local government by the activities of the Corporation or its agents. The Corporation, its property, franchises, and income are expressly exempted from taxation in any manner or form by any State, county, municipality, or any subdivision thereof, but such exemption shall not extend to contractors for the Corporation.

33 USC Sec. 987 01/05/99

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 19 - SAINT LAWRENCE SEAWAY

Sec. 987. Services and facilities of other agencies

(a) Utilization of personnel, services, facilities, and information

The Corporation may, with the consent of the agency concerned, accept and utilize, on a reimbursable basis, the officers, employees, services, facilities, and information of any agency of the Federal Government, except that any such agency having custody of any data relating to any of the matters within the jurisdiction of the Corporation shall, upon request of the Administrator, make such data available to the Corporation without reimbursement.

(b) Contributions to retirement and disability, and employees' compensation, funds; payment of costs

The Corporation shall contribute to the civil-service retirement and disability fund, on the basis of annual billings as determined by the Director of the Office of Personnel Management, for the Government's share of the cost of the civil-service retirement system applicable to the Corporation's employees and their beneficiaries. The Corporation shall also contribute to the employee's compensation fund, on the basis of annual billings as determined by the Secretary of Labor, for the benefit payments made from such fund on account of the Corporation's employees. The annual billings shall also include a statement of the fair portion of the cost of the administration of the respective funds, which shall be paid by the Corporation into the Treasury as miscellaneous receipts.

33 USC Sec. 988 01/05/99

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 19 - SAINT LAWRENCE SEAWAY

Sec. 988. Rates of charges or tolls

(a) Negotiation with Canadian authorities; revenue sharing formula; consideration of American financing costs, including interest and debt principal; rules of measurement; hearings and rehearings; approval by President; court review

The Corporation is further authorized and directed to negotiate with the Saint Lawrence Seaway Authority of Canada, or such other agency as may be designated by the Government of Canada, an agreement as to the rules for the measurement of vessels and cargoes and the rates of charges or tolls to be levied for the use of the Saint Lawrence Seaway, and for an equitable division of the revenues of the seaway between the Corporation and the Saint Lawrence Seaway Authority of Canada. Any formula for a division of revenues which takes into consideration annual debt charges shall include the total cost, including both interest and debt principal, incurred by the United States in financing activities authorized by this chapter, whether or not reimbursable by the Corporation. Such rules for the measurement of vessels and cargoes and rates of charges or tolls shall, to the extent practicable, be established or changed only after giving due notice and holding a public hearing. In the event that such negotiations shall not result in agreement, the Corporation is authorized and directed to establish unilaterally such rules of measurement and rates of charges or tolls for the use of the works under its administration: Provided, however, That the Corporation shall give three months' notice, by publication in the Federal Register, of any proposals to establish or change unilaterally the basic rules of measurement and of any proposals to establish or change unilaterally the rates of charges or tolls, during which period a public hearing shall be conducted. Any such establishment of or changes in basic rules of measurement or rates of charges or tolls shall be subject to and shall take effect thirty days following the date of approval thereof by the President, and shall be final and conclusive, subject to review as hereinafter provided. Any person aggrieved by an order of the Corporation establishing or changing such rules or rates may, within such thirty-day period, apply to the Corporation for a rehearing of the matter upon the basis of which the order was entered. The Corporation shall have power to grant or deny the application for rehearing and upon such rehearing or without further hearing to abrogate or modify its order. The action of the Corporation in denying an application for rehearing or in abrogating or modifying its order shall be final and conclusive thirty days after its approval by the President unless within such thirty-day period a petition for review is filed by a person aggrieved by such action in the United States Court of Appeals for the circuit in which the works to which the order applies are located or in the United States Court of Appeals for the District of Columbia. The court in which such petition is filed shall have the same jurisdiction and powers as in the case of petitions to review orders of the Federal Energy Regulatory Commission filed under section 825l of title 16. The judgment of the court shall be final subject to review by the Supreme Court upon certiorari or certification as provided in sections 1254(1) and 1254(2) of title 28. The filing of an application for rehearing shall not, unless specifically ordered by the Corporation, operate as a stay of the Corporation's order. The filing of a petition for review shall not, unless specifically ordered by the court, operate as a stay of the Corporation's order.

(b) Principles governing establishment of rates

In the course of its negotiations, or in the establishment, unilaterally, of the rates of charges or tolls as provided in subsection (a) of this section, the Corporation shall be guided by the following principles:

(1) That the rates shall be fair and equitable and shall give due consideration to encouragement of increased utilization of the navigation facilities, and to the special character of bulk agricultural, mineral, and other raw materials.

(2) That rates shall vary according to the character of cargo with the view that each classification of cargo shall so far as practicable derive relative benefits from the use of these facilities.

(3) That the rates on vessels in ballast without passengers or cargo may be less than the rates for vessels with passengers or cargo.

(4) That the rates prescribed shall be calculated to cover, as nearly as practicable, all costs of operating and maintaining the works under the administration of the Corporation, including depreciation and payments in lieu of taxes.

33 USC Sec. 988a 01/05/99

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 19 - SAINT LAWRENCE SEAWAY

Sec. 988a. Waiver of collection of charges or tolls

(a) Notwithstanding section 988 of this title or any other provision of law, the Corporation shall not collect any charge or toll established pursuant to section 988 of this title with respect to a commercial vessel (as defined in section 4462(a)(4) of title 26).

(b) The Corporation will maintain a record of the annual amount of each charge or toll that would have been collected with respect to each such commercial vessel if it were not for paragraph (a) of this section.

33 USC Sec. 989 01/05/99

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 19 - SAINT LAWRENCE SEAWAY

Sec. 989. Special reports

(a) Repealed. Pub. L. 104-66, title I, Sec. 1121(j), Dec. 21, 1995, 109 Stat. 724.

(b) The Corporation, after July 17, 1957, shall submit special reports to the Congress whenever there is proposed a new feature, design, or phase of the seaway project, not heretofore included in estimates, or whenever there is proposed an abandonment of any feature, design, or phase, heretofore included in estimates, involving an estimated value exceeding one million dollars, and such special reports shall include justification for the modifications.

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 19 - SAINT LAWRENCE SEAWAY

Sec. 990. Offenses and penalties

(a) Application of penal statutes

All general penal statutes relating to the larceny, embezzlement, or conversion, of public moneys or property of the United States shall apply to the moneys and property of the Corporation.

(b) Frauds and false entries, reports, or statements

Any person who, with intent to defraud the Corporation, or to deceive any director, officer, or employee of the Corporation or any officer or employee of the United States, (1) makes any false entry in any book of the Corporation, or (2) makes any false report or statement for the Corporation, shall, upon conviction thereof, be fined not more than $10,000 or imprisoned not more than five years, or both.

(c) Receipt of compensation, or conspiracy, with intent to defraud, etc.

Any person who shall receive any compensation, rebate, or reward, or shall enter into any conspiracy, collusion, or agreement, express or implied, with intent to defraud the Corporation or wrongfully and unlawfully to defeat its purposes, shall, on conviction thereof, be fined not more than $5,000 or imprisoned not more than five years, or both.

111126 12339

DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: 193573 DATE: December 19, 1979

MATTER OF: Saint Lawrence Seaway Development Corporation - Status of Funds as "Appropriated"

DIGEST: Saint Lawrence Seaway Development Corporation requests that GAO reverse its holding (B-193573, January 8, 1979), that user fees derived from its corporate activities are appropriated funds. Based on its interpretation of language in its annual appropriation act, its enabling legislation, and the Government Corporation Control Act, the Seaway Corporation contends that funds available to the Corporation are non-appropriated funds. GAO concludes that the Corporation's funds are appropriated but by virtue of the Corporation's enabling legislation, are exempt from many statutory restrictions on the use of appropriated funds. B-193573, January 8, 1979, affirmed, as modified.

This decision is in response to a request by the General Counsel of the Saint Lawrence Seaway Development Corporation for review and reconsideration of our decision, Matter of Applicability of FY 1979 5.5 percent pay increase ceiling to employees of Saint Lawrence Seaway Development Corporation (B-193573, January 8, 1979), in which we held that the Corporation's funds are appropriated funds, despite the fact that the source of such funds is user fees. (The General Counsel agrees with the result of the decision, that Corporation employees are not subject to the 5.5 percent pay increase ceiling, and that holding is not here at issue.) Professor Harold Seidman, Department of Political Science, University of Connecticut, has also offered his views in support of the position that the Corporation is not subject to the laws applicable to appropriated funds.

The General Counsel, supported in general by Professor Seidman, contends that our holding is in direct conflict with the underlying principles of the Saint Lawrence Seaway Act (33 U.S.C. § 981 et seq.), the Government Corporation Control Act (31 U.S.C. § 841 et seq.) and the purposes which a Government corporation is designed to serve. He further contends that our holding is contrary to the plain language of the provisions of the annual Department of Transportation Appropriations Act.

We have reviewed each of these contentions carefully, but we continue to believe that the funds available to the Seaway Corporation are appropriated funds despite the fact that they are derived from user fees. However, this does not mean that expenditures by the Seaway Corporation are subject to all the restrictions which apply to the use of appropriated funds by other Federal entities. The Seaway Corporation, as is typical of Government corporations, has express statutory authority to determine the character and necessity for its obligations and expenditures. It is therefore exempt from many of the restrictions on the use of appropriated funds which would otherwise apply.

In our decision B-34706, December 5, 1947, we analyzed the differences between Government corporations and Executive agencies and departments. There we pointed out that it was not possible "to generalize with completeness as to the actual significance of the use of the corporate form" because of the lack of uniformity among Government corporations. The degree of flexibility enjoyed by a Government corporation depends entirely on the provisions contained in its enabling legislation. The Government Corporation Control Act (31 U.S.C. § 841 et seq.) did not expand or diminish the flexibility conferred upon the individual Government corporations by their enabling legislation. Rather, the declared policy of the Act was to provide the Congress with a means for it to exercise its oversight responsibilities over the financial activities of Government corporations.

Specifically, the Seaway Corporation's enabling legislation contained in 33 U.S.C. § 984(a)(9) expressly provides that it:

> "* * * shall determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed and paid, subject to provisions of law specifically applicable to Government corporations * * *."

This provision grants the Corporation broad discretion in the obligation and expenditure of its funds. Indeed, the provision in effect exempts the Corporation from the majority of statutory restrictions on the use of appropriated funds. This leaves the Corporation subject only to restrictions on its use of appropriations that can be directly implied from its enabling legislation, t at are included in appropriation acts applicable to the Corporation, or th are made specifically applicable to Government corporations.

In view of the few restrictions on the use of its funds that are applicable to the Corporation, we do not believe that our conclusion that its funds are appropriated, even though they derive from user fees, will impair the flexibility which the corporate form is intended to permit or that the Corporation will be hampered in its fiscal operations and procedures.

To the extent that our January 8, 1979, decision, suggests otherwise, we agree that it should be modified without, however, changing the conclusion that funds of the Corporation are appropriated. Specifically, in our January 8, 1979, decision, we said that Corporation expenditures "* * * are subject to any restrictions applicable to the expenditure of appropriated funds." However, that broad statement should be qualified. The Seaway Corporation is not subject to all such restrictions; it may, by virtue of 33 U.S.C. § 984(a)(9), supra, decide to spend or obligate its funds for objects for which appropriated funds would otherwise not be available. For example, unlike other Government entities, the Corporation is exempt from such appropriation restrictions as are contained in 31 U.S.C. § 551, prohibiting the expenditure of appropriated funds for lodging and feeding non-Government employees at conventions or assemblages, and 5 U.S.C. § 3107, prohibiting the use of appropriated funds for the employment of publicity experts. On the other hand, because we believe that there are still important areas in which the Congress has retained control of Corporation expenditures (see, e.g., our statement in B-193573, supra, that had wage adjustments for the Corporation's prevailing rate employees been made pursuant to a wage survey the 5.5 percent wage increase ceiling would have been applicable), it is important to address the various arguments advanced by the Corporation's General Counsel that the funds available to the Corporation are not appropriated funds.

Apparently, the General Counsel believes that "appropriated funds" are limited to funds which the Congress appropriates from the Treasury for a specific purpose. However, the statutory definition of "appropriations", for purposes of the Budget and Accounting Act, 1921 (31 U.S.C. § 2), is not restricted to such a narrow class of funds. That definition reads as follows:

> "The term 'appropriations' includes, in appropriate context, funds and authorizations to create obligation by contract in advance of appropriations or any other authority making funds available for obligation or expenditure."

We have long held that this definition includes not only contract authority as such but also appropriations from revolving, special or trust funds. See for example B-107689, August 4, 1972; id. October 25, 1972; and id. March 13, 1973. A similar issue was addressed by the United States Court of Appeals, District of Columbia Circuit, in United Biscuit Company of America v. Wirtz, 359 F.2d 206 (1965), where the court held that receipts from patron purchases from military commissaries, credited to a stock fund, were appropriated funds. The court, in arriving at this conclusion, reasoned as follows:

"Appellant seizes on this method of financing and argues that the money paid it for its goods came not from appropriated funds, but from the consumer's pocket. Appellant analogizes the stock fund to a regular bank account and argues that the court should 'trace' the money to the consumers who paid the commissaries for the goods. We find no merit in appellant's contentions.

"* * * The provision for a revolving fund, replenished by the proceeds from commissary sales, was apparently considered an administrative convenience. It eliminated the need for a new appropriation each fiscal year by creating what was, in effect, an on-going appropriation. * * * Long standing administrative rulings and practice support this interpretation of Section 405 [of the National Security Act Amendments of 1949, 63 Stat. 578, 587-88 (1949), 10 U.S.C. § 2208.] The Comptroller General, in the past, has ruled that the establishment of a revolving fund, replenished by moneys from the public, constitutes an on-going appropriation which does not have to be renewed each year. 1 COMP. GEN. DECS. 704 (1922). And the armed services have conducted their entire purchasing program for commissaries under the belief that moneys paid out of the stock funds were appropriated. Finally, the Supreme Court has recently stated, during the course of an opinion, that all commissary purchases are made from appropriated funds within the meaning of Section 2303(a). Paul v. United States, 371 U.S. §§ 245, 261-263, 83 S. Ct. 426, 9 L.Ed.2d 292 (1963)."

As indicated by the Court, we have consistently regarded a statute which authorizes the collection and credit of fees to a particular fund and which makes the fund available for specified expenditures as constituting a continuing appropriation. 57 Comp. Gen. 311 (1978), 50 id. 323 (1970); and 35 id. 615 (1956).

The General Counsel further contends that 33 U.S.C. § 985 authorizes the Corporation to issue revenue bonds to the Secretary of the Treasury, payable from corporate revenues, to finance its activities and thus that appropriated funds are not involved. Under our decisions, funds made available to the Seaway Corporation through the sale of bonds to the United States Treasury or from user fees would nevertheless constitute appropriated funds because these funds were made available by action of the Congress for obligation and expenditure. See also 31 U.S.C. § 2, supra. Hence the Corporation operates with appropriated funds.

We do not believe that appropriated funds are not involved merely because Congress authorized the Seaway Corporation to borrow its capitalization through the issuance of long term bonds to the United States Treasury. We described the means used by Congress to capitalize Government corporations with appropriations in our decision B-34706, supra. We stated that usually corporations are given a lump sum appropriation in the form of capital stock. In other cases Congress grants corporations the authority to borrow funds for their capitalization. In either event, the corporation's capitalization consists of appropriated funds.

The Court of Claims in Breitbeck v. United States, 500 F. 2d 556 (1974), discussed the type of funds employed by the Saint Lawrence Seaway Development Corporation. In that case, the Government argued that because the Seaway Corporation had been established with borrowed funds in the form of long term bonds and obtained its operating funds from user fees, it was self-sufficient from the United States Government, and thus that it would contradict the obvious self-sufficiency purpose to permit judgments on claims against the Corporation to be paid from the general fund of the United States Treasury. The Court ruled against this argument with the following rationale:

> "By these provisions [the Corporation's enabling legislation] Congress did attempt to make the agency self-supporting, in general, in the long run, but there are likewise substantial indications that this was not to separate it wholly from the Treasury. The long run was quite extended since the bond maturities could be up to fifty years; meanwhile Treasury funds could and were expected to be used. Even in the long run, regular federal funds would still be involved. At the instance of the Corporation itself (represented by the United States Attorney), the Northern District of New York held that a tort claim, cognizable under the Federal Tort Claims Act, could not be maintained against the agency but had to be brought against the United States under the Tort Claims Act (with judgment to be paid, of course, from general appropriated funds). Handley v. Tecon Corp., 172 F. Supp. 565 (N.D.N.Y. 1959). Section 987(b) [of title 33] contemplates that employee retirement annuities (both longevity and disability) are to be paid by the Civil Service Commission from Treasury moneys and, similarly, disability payments for Corporation employees are made from the general employees' compensation fund. There is, in short, no such clear cleavage between the Corporation's own funds and those of the United

States that one can say that Congress wished to cut the agency entirely loose from the Treasury or from appropriated funds." At 559, footnote omitted.

The General Counsel contends further that our earlier decision was in error in stating that the Congress appropriated funds for the Seaway Corporation in the Department of Transportation and Related Agencies Appropriation Act, 1979, Pub. L. No. 95-335, August 4, 1978, 92 Stat. 444. He points out that Congress used language in the Department of Transportation Appropriations Act for the Seaway Corporation different from the standard appropriations language it used for other non-corporate Department of Transportation agencies. He maintains that this difference in language indicates that Congress did not appropriate funds for the Seaway Corporation but merely authorized it to use funds for operations derived from user fees the Corporation collects. Similarly, he contends that Congress did not create for the Seaway Corporation a specific user fee fund, which he asserts is necessary if user fees are to be considered as appropriated funds. Finally, he says that although the Seaway Corporation deposits its user fees into the Treasury, this constitutes something akin to a commercial checking account which does not require an appropriation when withdrawn from the Treasury.

The Department of Transportation and Related Agencies Appropriation Act, 1979, Pub. L. No. 95-335, supra, reads as follows with respect to the Seaway Corporation:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of Transportation and related agencies for the fiscal year ending September 30, 1979, and for other purposes, namely:

* * * *

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

"The Saint Lawrence Seaway Development Corporation is hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to such Corporation, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended, as may be necessary in carrying out the programs set forth in the

> budget for the current fiscal year for the Corporation except as hereinafter provided.
>
> "Limitation on Administrative Expenses. Saint Lawrence Seaway Development Corporation
>
> "Not to exceed $1,280,000 shall be available for administrative expenses which shall be computed on an accrual basis, including not to exceed $3,000 for official entertainment expenses to be expended on the approval or authority of the Secretary of Transportation: Provided, That Corporation funds shall be available for the hire of passenger motor vehicles and aircraft, operation and maintenance of aircraft, uniforms or allowances therefor for operation and maintenance personnel, as authorized by law (5 U.S.C. 5901-5902), and $15,000 for services as authorized by 5 U.S.C. 3109."

The General Counsel argues that the above-quoted provision is not an appropriation, but rather is an authorization under section 104 of the Government Corporation Control Act, 31 U.S.C. § 849, which reads as follows:

> "The Budget programs transmitted by the President to the Congress shall be considered and legislation shall be enacted making necessary appropriations, as may be authorized by law, making available for expenditure for operating and administrative expenses such corporate funds or other financial resources or limiting the use thereof as the Congress may determine and providing for repayment of capital funds and the payment of dividends. The provisions of this section shall not be construed as preventing Government corporations from carrying out and financing their activities as authorized by existing law, nor as affecting the provisions of section 831y of Title 16. The provisions of this section shall not be construed as affecting the existing authority of any Government corporation to make contracts or other commitments without reference to fiscal year limitations."

Whether the language in the Corporation's fiscal year 1979 appropriation act constitutes an authorization or an appropriation is immaterial. As indicated above, it is our view that any time the Congress specifies the manner in which a Federal entity shall be funded and makes such funds available for obligation or expenditure, that constitutes an appropriation, whether the language is found in an appropriation act or in other legislation.

The language of the Appropriation Act concerning the Seaway Corporation leaves no doubt that Congress intended that operating funds of the Corporation are to be considered as appropriated funds. In this connection, the last paragraph of the Seaway Corporation provision provides an exception to various statutory restrictions on the use of appropriated funds. This exception permits the Corporation to expend its funds for automobiles and aircraft and for uniforms. This exception would not be necessary if the Seaway Corporation were operating with non-appropriated funds, because restrictions on these uses apply only to appropriated funds.

We have also considered the General Counsel's argument that Congress must authorize a specific fund for user fees in order to have such funds considered to be appropriated funds. We do not agree. In our earlier decision, we stated that this Office had long regarded a statute which authorized the collection and credit of fees to a particular fund for specified purposes, and which makes the fund available for obligation and expenditure as authorized, as constituting an appropriation. 57 Comp. Gen. 311, 313 supra, and 35 id. 615 supra. To satisfy this criterion, it is not essential for Congress to create expressly a fund in the authorizing statute. Such a fund is, in effect, created when Congress authorizes the expenditure of user fees for operating expenses of a Government corporation, as it has done in the case of the Seaway Corporation. By the same token, once the Congress has appropriated funds for the use of a Government entity such as the Seaway Corporation, the nature of the appropriated funds is not affected by where these funds are kept. For example, the funds would still be considered appropriated funds even if the Corporation were authorized to retain them in a commercial bank checking account.

For the reasons set forth above, we conclude that the operating funds of the Seaway Corporation are appropriated funds. However, Congress has granted the Corporation, through enabling legislation, broad discretion in the obligation and expenditure of its funds, which has the effect of exempting it from many of the statutory restrictions on the use of appropriated funds. Our decision B-193573, January 8, 1979, is hereby affirmed, as modified.

Elmer B. Staats
Comptroller General
of the United States

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-0500

OFFICE OF THE GENERAL COUNSEL

March 20, 2001

MEMORANDUM FOR: V. Stephen Carberry, Chief Procurement Officer, ARC

FROM: John P. Kennedy, Associate General Counsel for Finance and Regulatory Enforcement, CF

SUBJECT: Ginnie Mae Authority for Refreshments at Conference

This is in response to Edward Stever's request that the Office of General Counsel provide you with an opinion as to the Government National Mortgage Association's (Ginnie Mae's) authority to purchase refreshments at an investors' conference. We are of the opinion that Ginnie Mae has such authority.

Discussion

Ginnie Mae is a wholly owned government corporation within the United States Department of Housing and Urban Development. Pursuant to the provisions of Section 306(g) of the National Housing Act, 12 U.S.C. Sec. 1721(g), Ginnie Mae operates a mortgage-backed securities program the overall purpose of which is to attract private capital into the secondary market for low- and moderate-income home mortgage loans, thus making more funds available for such loans and reducing financing costs. The Ginnie Mae program serves the important public purpose of increasing the availability of low- and moderate-income housing. Unlike most other Government agencies, Ginnie Mae operates in a business environment that has become increasingly competitive. In this environment, Ginnie Mae has identified a need to expand its outreach activities with respect to current and potential business partners in the private sector, including minority firms. Such outreach activities help Ginnie Mae to carry out its mission more effectively.

As a general rule, government agencies are not permitted to purchase refreshments with appropriated funds. However, this rule has been held not to apply to government corporations with statutory authority to determine the character and necessity of their expenses. Principals of Federal Appropriations Law, Vol. I, Second Edition, Chapter 4, Sec. 5a(1). Ginnie Mae's statute contains such a provision. Section 309(b) of the National Housing Act, 12 U.S.C. Sec. 1723a(b), reads as follows:

> Except as may be otherwise provided in this title, in chapter 91 of title 31, United States Code, or in other laws specifically applicable

> to Government corporations, the Association shall determine the necessity for and the character and amount of its obligations and expenditures and the manner in which they shall be incurred, allowed, paid, and accounted for.

Two Comptroller General opinions which support this interpretation are: (1) Decision of the Comptroller General of the United States in the Matter of St. Lawrence Seaway Development Corporation, B-193573, December 19, 1979[1]; and (2) Decision of the Comptroller General, B-127949, May 18, 1956. Copies of these opinions are attached.

In the December 19, 1979, St. Lawrence Seaway Development Corporation decision, the Comptroller General stated that:

> This provision [substantially identical in pertinent part to Section 309(b) of the National Housing Act] grants the Corporation broad discretion in the obligation and expenditure of its funds. Indeed, the provision in effect exempts the Corporation from the majority of statutory restrictions on the use of appropriated funds. This leaves the Corporation subject only to restrictions on its use of appropriations that can be directly implied from its enabling legislation, that are included in appropriation acts applicable to the Corporation, or that are made specifically applicable to Government corporations.

In addition to 12 U.S.C. Sec. 1723a(b), cited above, Ginnie Mae has other statutory authority for the expenditures it proposes to make. Section 1 of the National Housing Act, 12 U.S.C. Sec. 1702, provides in pertinent part:

> The Secretary may . . . make such expenditures . . . as are necessary to carry out the provisions of this title and titles . . . III . . . without regard to any other provisions of law governing the expenditure of public funds.

Our reading of these decisions and statutes indicates that the National Housing Act would authorize Ginnie Mae to conduct outreach activities in furtherance of its mission, notwithstanding the existence of appropriations limitations in other statutes, such as 31 U.S.C. Sec. 1345 (lodging and feeding nongovernment employees), the rule against using appropriated funds for entertainment, and 5 U.S.C. Sec. 5946 (use of

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[1] This opinion was brought forward by B-217578, dated October 16, 1986, in response to a request for reconsideration of the earlier opinion made by Frederick A. Bush, Chief Counsel, Saint Lawrence Seaway Development Corporation, Department of Transportation.

appropriated funds to pay for agency employees to attend association meetings).

The Comptroller General has looked at the issue of whether a wholly owned government corporation with statutory authority to determine the necessity and character of its expenses can purchase refreshments at a conference in the case of the St. Lawrence Seaway Development Corporation, the organization and authority of which is analogous to Ginnie Mae, and sanctioned the use of its funds for refreshments. B-127949, December 19, 1979.

Conclusion

We have concluded that the provisions contained in sections 1 and 309(b) of National Housing Act permit Ginnie Mae to purchase refreshments at conferences which support the Ginnie Mae mission. If you have any questions or wish to discuss this further, please call me at x5181 or Kathy Davies at x5202.

	Budgetary resources available for obligation:			
21.49	Unobligated balance carried forward, start of year: Contract authority		18	29
22.00	New budget authority (gross)	6,296	5,021	5,398
23.90	Total budgetary resources available for obligation	6,296	5,039	5,427
23.95	Total new obligations	−6,278	−5,010	−5,398
24.49	Unobligated balance carried forward, end of year: Contract authority	18	29	29
	New budget authority (gross), detail:			
	Discretionary:			
40.26	Appropriation (trust fund, definite)	4,940	5,021	5,398
40.49	Portion applied to liquidate contract authority used	−6,576	−5,017	−5,398
42.00	Transferred from other accounts	1,647		
43.00	Appropriation (total discretionary)	11	4	
	Mandatory:			
66.10	Contract authority	4,638	5,017	5,398
66.15	Contract authority (Transfer from Federal-aid highways)	1,647		
66.90	Contract authority (total mandatory)	6,285	5,017	5,398
70.00	Total new budget authority (gross)	6,296	5,021	5,398
	Change in unpaid obligations:			
73.10	Total new obligations	6,278	5,010	5,398
73.20	Total outlays (gross)	−6,278	−5,010	−5,398
	Outlays (gross), detail:			
86.90	Outlays from new discretionary authority	6,278	5,010	5,398
	Net budget authority and outlays:			
89.00	Budget authority	6,296	5,021	5,398
90.00	Outlays	6,278	5,010	5,398

Status of Contract Authority (in millions of dollars)

Identification code 69–8350–0–7–401		2000 actual	2001 est.	2002 est.
0100	Balance, start of year		18	29
	Contract authority:			
0200	Contract authority	6,285	5,017	5,398
0400	Appropriation to liquidate contract authority	−6,576	−5,017	−5,398
0700	Balance, end of year	18	29	29
0705	Surplus liquidating cash, end of year (memo entry)	309	320	320

For 2002, this account tracks the portion of funds for each of FTA's programs derived from the Mass Transit Account of the Highway Trust Fund.

STATUS OF THE MASS TRANSIT ACCOUNT OF THE HIGHWAY TRUST FUND

[In millions of dollars]

	2000 actual	2001 est.	2002 est.
Unexpended balance, start of year	9,753	8,547	7,250
Cash income during the year, Governmental receipts:			
Motor fuel taxes	4,625	4,696	4,807
Total annual income	4,625	4,696	4,807
Cash outlays during the year:			
Discretionary grants/Major capital investments (liquidation of contract authorization)	1,200	983	614
Trust fund share of transit programs	4,631	5,010	5,398
Total annual outlays	5,831	5,993	6,012
Unexpended balance, end of year	8,547	7,250	6,045

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

Public enterprise funds:

Saint Lawrence Seaway Development Corporation

The Saint Lawrence Seaway Development Corporation is hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to the Corporation, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended, as may be necessary in carrying out the programs set forth in the Corporation's budget for the current fiscal year. *(Department of Transportation and Related Agencies Appropriations Act, 2001, as enacted by section 101(a) of P.L. 106–346.)*

Program and Financing (in millions of dollars)

Identification code 69–4089–0–3–403		2000 actual	2001 est.	2002 est.
	Obligations by program activity:			
00.01	Operations and maintenance	12	13	13
00.02	Replacement and improvements	1	1	1
10.00	Total new obligations	13	14	14
	Budgetary resources available for obligation:			
21.40	Unobligated balance carried forward, start of year	13	13	13
22.00	New budget authority (gross)	13	14	14
23.90	Total budgetary resources available for obligation	26	27	27
23.95	Total new obligations	−13	−14	−14
24.40	Unobligated balance carried forward, end of year	13	13	13
	New budget authority (gross), detail:			
	Mandatory:			
69.00	Offsetting collections (cash)	13	14	14
	Change in unpaid obligations:			
	Unpaid obligations, start of year:			
72.40	Unpaid obligations, start of year	3	3	3
72.99	Obligated balance, start of year	3	3	3
73.10	Total new obligations	13	14	14
73.20	Total outlays (gross)	−13	−14	−14
	Unpaid obligations, end of year:			
74.40	Unpaid obligations, end of year	3	3	3
74.99	Obligated balance, end of year	3	3	3
	Outlays (gross), detail:			
86.97	Outlays from new mandatory authority	13	14	14
	Offsets:			
	Against gross budget authority and outlays:			
	Offsetting collections (cash) from:			
88.00	Federal sources	−12	−13	−13
88.40	Non-Federal sources	−1	−1	−1
88.90	Total, offsetting collections (cash)	−13	−14	−14
	Net budget authority and outlays:			
89.00	Budget authority			
90.00	Outlays			

The Saint Lawrence Seaway Development Corporation (SLSDC) is a wholly owned Government Corporation responsible for the operation, maintenance and development of the United States portion of the St. Lawrence Seaway between Montreal and Lake Erie. Major priorities are to control Seaway Corporation costs and to encourage increased use of the Seaway system.

Appropriations from the Harbor maintenance trust fund and revenues from non-Federal sources are intended to finance the operations and maintenance portion of the Seaway for which the Corporation is responsible.

Statement of Operations (in millions of dollars)

Identification code 69–4089–0–3–403		1999 actual	2000 actual	2001 est.	2002 est.
0101	Revenue	11	12	13	13
0102	Expense	−11	−11	−13	−13
0105	Net income or loss (−)		1		

Public enterprise funds—Continued

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION—Continued

Balance Sheet (in millions of dollars)

Identification code 69–4089–0–3–403	1999 actual	2000 actual	2001 est.	2002 est.
ASSETS:				
1101 Federal assets: Fund balances with Treasury	1	1	1	1
Other Federal assets:				
1801 Cash and other monetary assets	13	13	13	13
1803 Property, plant and equipment, net	85	84	87	87
1901 Other assets	2	2	2	2
1999 Total assets	101	100	103	103
LIABILITIES:				
Non-Federal liabilities:				
2201 Accounts payable	2	2	2	2
2206 Pension and other actuarial liabilities	2	2	2	2
2999 Total liabilities	4	4	4	4
NET POSITION:				
3300 Cumulative results of operations	97	96	99	99
3999 Total net position	97	96	99	99
4999 Total liabilities and net position	101	100	103	103

Object Classification (in millions of dollars)

Identification code 69–4089–0–3–403	2000 actual	2001 est.	2002 est.
Direct obligations:			
11.1 Personnel compensation: Full-time permanent	8	8	8
12.1 Civilian personnel benefits	2	2	2
26.0 Supplies and materials	1	1	1
32.0 Land and structures	....	1	1
99.0 Subtotal, direct obligations	11	12	12
99.5 Below reporting threshold	2	2	2
99.9 Total new obligations	13	14	14

Personnel Summary

Identification code 69–4089–0–3–403	2000 actual	2001 est.	2002 est.
1001 Total compensable workyears: Full-time equivalent employment	148	157	157

Trust Funds

OPERATIONS AND MAINTENANCE

(HARBOR MAINTENANCE TRUST FUND)

For necessary expenses for operations and maintenance of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation, [$13,004,000] *$13,345,000*, to be derived from the Harbor Maintenance Trust Fund, pursuant to Public Law 99–662. *(Department of Transportation and Related Agencies Appropriations Act, 2001, as enacted by section 101(a) of P.L. 106–346.)*

Program and Financing (in millions of dollars)

Identification code 69–8003–0–7–403	2000 actual	2001 est.	2002 est.
Obligations by program activity:			
10.00 Total new obligations (object class 25.2)	12	13	13
Budgetary resources available for obligation:			
22.00 New budget authority (gross)	12	13	13
23.95 Total new obligations	−12	−13	−13
New budget authority (gross), detail:			
Discretionary:			
40.26 Appropriation (trust fund, definite)	12	13	13
Change in unpaid obligations:			
73.10 Total new obligations	12	13	13
73.20 Total outlays (gross)	−12	−13	−13
Outlays (gross), detail:			
86.90 Outlays from new discretionary authority	12	13	13
Net budget authority and outlays:			
89.00 Budget authority	12	13	13
90.00 Outlays	12	13	13

The Water Resources Development Act of 1986 authorizes use of the Harbor maintenance trust fund as the major source of funding for the Corporation's operations and maintenance activities.

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

The following table depicts funding for all the Research and Special Programs Administration programs.

[In millions of dollars]

	2000 actual	2001 est.	2002 est.
Budget authority:			
Research and special programs	32	36	42
Emergency preparedness grants	25	14	14
Pipeline safety	31	39	46
Trust fund share of pipeline safety	5	7	7
Pipeline safety, subtotal	37	47	54
Total budget authority	93	98	110
Program level (obligations):			
Research and special programs	32	37	42
Emergency preparedness grants	14	14	14
Pipeline safety	35	51	54
Trust fund share of pipeline safety	6	8	7
Pipeline safety, subtotal	41	59	61
Volpe transportation systems center (reimbursable)	199	205	208
Total program level, net	286	315	325
Outlays:			
Research and special programs	−3	67	40
Emergency preparedness grants	8	13	14
Pipeline safety	27	33	43
Trust fund share of pipeline safety	9	4	7
Total outlays	42	118	105

Federal Funds

General and special funds:

RESEARCH AND SPECIAL PROGRAMS

For expenses necessary to discharge the functions of the Research and Special Programs Administration, [$36,373,000] *$41,993,000*, of which $645,000 shall be derived from the Pipeline Safety Fund, and of which [$4,707,000] *$5,145,000* shall remain available until September 30, [2003] *2004*: *Provided*, That up to $1,200,000 in fees collected under 49 U.S.C. 5108(g) shall be deposited in the general fund of the Treasury as offsetting receipts: *Provided further*, That there may be credited to this appropriation, to be available until expended, funds received from States, counties, municipalities, other public authorities, and private sources for expenses incurred for training, for reports publication and dissemination, and for travel expenses incurred in performance of hazardous materials exemptions and approvals functions. *(Department of Transportation and Related Agencies Appropriations Act, 2001, as enacted by section 101(a) of P.L. 106–346.)*

Unavailable Collections (in millions of dollars)

Identification code 69–0104–0–1–407	2000 actual	2001 est.	2002 est.
01.99 Balance, start of year	....	....	....
Receipts:			
02.60 Hazardous material user fees, legislative proposal not subject to PAYGO	....	....	12

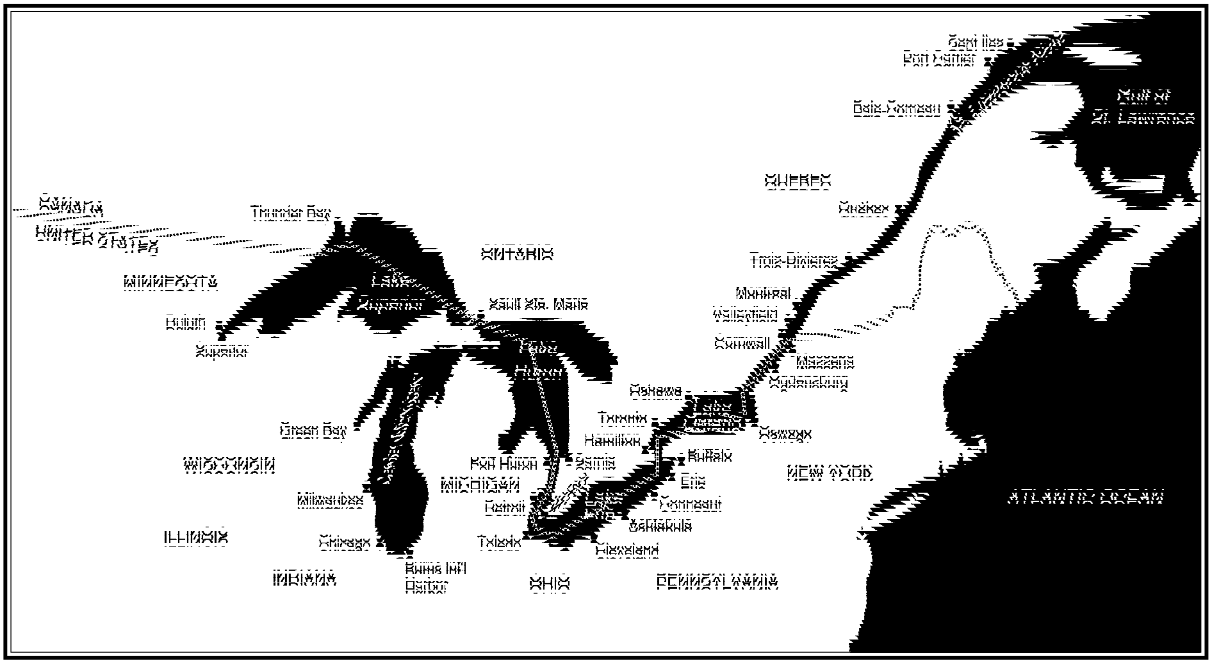
Fiscal Year 1999

Annual Report

Celebrating 40 Years of Deep Draft Navigation

Looking back with pride,
and ahead with vision

Saint Lawrence Seaway Development Corporation



The **Saint Lawrence Seaway Development Corporation** (SLSDC or Corporation) is a wholly-owned government corporation created by statute May 13, 1954, to construct, operate and maintain that part of the St. Lawrence Seaway between the Port of Montreal and Lake Erie, within the territorial limits of the United States.

The SLSDC coordinates its activities with its Canadian counterpart, The St. Lawrence Seaway Management Corporation (SLSMC) (formerly the St. Lawrence Seaway Authority), particularly with respect to rules and regulations, the Tariff of Tolls, overall day-to-day operations, traffic management, navigational aids, safety, environmental programs, operating dates, trade development and marketing programs. The unique binational nature of the System requires 24-hour, year-round coordination between the two Seaway entities.

The mission of the Corporation is to serve the U.S. intermodal and international transportation system by improving the operation and maintenance of a safe, reliable, environmentally responsible deep-draft waterway, in cooperation with its Canadian counterpart. The SLSDC also encourages the development of trade through the Great Lakes Seaway System, which contributes to the comprehensive economic and environmental development of the entire Great Lakes region.

The SLSDC headquarters staff offices are located in Washington, D.C. Operations and operations personnel are located at the two U.S. Seaway locks (Eisenhower and Snell) in Massena, N.Y. As of September 30, 1999, the Corporation had 150 full-time equivalent employees, or FTEs.

The audit of the SLSDC for the 12 months ended September 30, 1999, was performed by Dembo, Jones, Healy, Pennington & Ahalt, P.C., in accordance with the Chief Financial Officers Act of 1990 and the Comptroller General's Government Auditing Standards. This report is in two sections. The first section (pages 1-23), was prepared by the Corporation to provide information on its organization, missions, goals and objectives, and performance measures. The information contained in this first section was not subject to audit. The second section (pages 24-40), consists of 1999 audited financial statements with associated notes and the reports of Dembo, Jones, Healy, Pennington & Ahalt, P.C. on those statements, and supplementary management information.

An electronic copy of this report can be obtained on the SLSDC web site at: http://www.dot.gov/slsdc/reports/reports.html

Saint Lawrence Seaway Development Corporation
Index to Fiscal Year 1999 Annual Report

Annual Report Introduction by Administrator Albert S. Jacquez

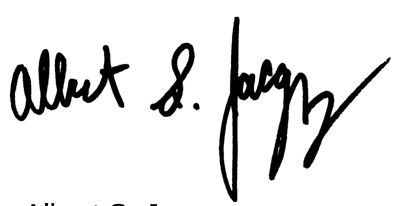
In accordance with the Chief Financial Officers Act of 1990 and the Comptroller General's Government Auditing Standards, I am pleased to present the annual management report of the Saint Lawrence Seaway Development Corporation for the fiscal year ended September 30, 1999. This report clearly presents the financial integrity and operational accomplishments of the Corporation during FY 1999.

In addition to celebrating the waterway's 40 years of deep draft navigation in FY 1999, the Corporation accomplished a number of activities and initiatives that not only increased the efficiency of agency operations, but also improved the waterway's long-standing record for safe commercial navigation and environmental protection. In 1999 the SLSDC achieved a 99.2 percent availability rate for the two U.S. locks, surpassing its goal of 99 percent; continued its vessel inspection program by inspecting 100 percent of all ocean vessels in Montreal, Quebec, prior to entering U.S. waters; and experienced the seventh consecutive shipping season with no vessel incidents in excess of $50,000 in damages.

Related to its customer service and business efficiencies, the Corporation received ISO 9002 certification in FY 1999 for its vessel traffic management, aids to navigation, personnel, administrative support and management information services operations. The SLSDC is one of the first agencies to apply these internationally recognized standards of quality management to the federal government.

The Corporation remains committed to the long-term viability of the Seaway System. In FY 1999, the U.S. Army Corps of Engineers completed a comprehensive study of the two U.S. Seaway locks. The study recommended that the SLSDC make maintenance improvements to its lock infrastructure. Following the 1999 navigation season, the SLSDC focused its annual lock winter work program on several of the recommendations made by the Corps. The results of the study were used in formulating the SLSDC's five-year maintenance plan for fiscal years 2000-2004.

The SLSDC will continue providing its customers from around the world with a safe, reliable, and competitive waterway while, at the same time, examining new and effective ways to increase the utilization of the Great Lakes Seaway System for maritime commerce to and from North America.



Albert S. Jacquez

FY 1999 FINANCIAL HIGHLIGHTS

The financial statements have been prepared to report the financial position and results of operations of the Corporation, pursuant to the requirements of the Chief Financial Officers Act of 1990.

Corporation Financing

Until 1987, the SLSDC was a self-sustaining entity and financed its operations and investment in plant and equipment by charging tolls to users of the two U.S. Seaway locks. Toll rates were established jointly with and collected by The St. Lawrence Seaway Authority (now known as SLSMC), with the U.S. share remitted to the Corporation. The Water Resources Development Act of 1986, Public Law 99-662, which created the Harbor Maintenance Trust Fund, made a significant change to SLSDC financing. The Act required the U.S. Treasury to rebate the portion of Seaway tolls paid by users for transiting the U.S. locks. Subsequent legislation, effective October 1, 1994, waived the billing and collection process of the U.S. tolls.

The Corporation's Fiscal Year (FY) 1999 annual appropriation from the Harbor Maintenance Trust Fund of $11.5 million financed 88 percent of the $13 million in expenditures ($11.6 million for operating expenses, excluding depreciation and imputed expenses, and $1.4 million for acquisition of plant, property and equipment). The remaining 12 percent was financed from financial reserves and other revenues, principally investment income and concession revenues.

Operating Revenues

Operating revenues, excluding imputed financing, totaled $10.5 million in FY 1999, compared to $10.3 million in FY 1998, an increase of $208,000 or 2 percent. Appropriations expended increased $284,000, from $9.8 million in FY 1998 to $10.1 million in FY 1999. Appropriations expended represents the amount of the Harbor Maintenance Trust Fund expended for operating purposes. Other revenues, principally from concession operations, decreased $76,000, from $548,000 in FY 1998 to $472,000 in FY 1999.

Operating Expenses

Overall operating expenses, excluding depreciation and imputed expenses, increased $235,000 or 2 percent from $11.3 million in FY 1998 to $11.6 million in FY 1999.

Personal services and benefits increased $135,000 or 2 percent from $8.9 million in FY 1998 to $9 million in FY 1999. The SLSDC employed 150 employees on September 30, 1999.

Other costs increased $100,000 or 4 percent from $2.45 million in FY 1998 to $2.55 million in FY 1999. The General Services Administration (GSA) rent payment process for headquarters and field space was decentralized in 1998. Accordingly, the SLSDC became responsible for making direct rental payments to GSA. In FY 1999, $203,000 was expended for rent of the SLSDC's Washington, D.C. office. In addition, $185,000 was paid to the Transportation Administrative Service Center for unemployment compensation and drug testing as well as services used by the Washington, D.C. office such as information technology, facility services, telecommunication services, printing, graphics, and security.

The Corporation's ROBINSON BAY tugboat was dry-docked for replacement of damaged transducers, blast cleaning, painting the hull, installation of fendering, and for the inspection and repair of the propeller, shaft, nozzle, and sea chests. The total cost of this project was $112,000.

Imputed Financing/Expenses

Effective in 1997, the Corporation was required to recognize and record the cost of pension and post-retirement benefits during employees' active years of service, based on cost factors provided by the Office of Personnel Management (OPM). These costs, which are in excess of the pension and benefits funded by the Corporation, are recorded as an expense paid by another entity, OPM, offset by an imputed financing source to the receiving entity, the SLSDC.

Total Assets

The Corporation's financial position continues to remain sound with total assets of $101 million.

Time Deposits in Minority Banks

A key asset of the Corporation is time deposits in minority banks, totaling $11.9 million at year-end. In FY 1999, a $895,000 increase in short-term deposits, offset by a $1.1 million decrease in long-term deposits, netted a decrease of $223,000 overall. The decrease in deposits is due to the drawdown of reserve funds to finance stoplog repairs and the purchase of ekki timbers. The funds on deposit in minority banks were principally built up from toll income in excess of cash outlays prior to April 1, 1987, when the Corporation was a self-sustaining entity, and are invested in insured deposits consistent with Executive Order 11625 (October 13, 1971).

Interest Income

Interest on deposits in minority banks decreased by $65,000 or 9 percent, totaling $697,000 in FY 1998 and $632,000 in FY 1999, a result of reduced investments and lower interest rates.

Unobligated Balance

The Corporation has an unobligated balance of $13.4 million, which is comprised of the $3.2 million of unused borrowing authority and the $10.2 million financial reserve. The reserve is maintained to finance emergency or extraordinary expenditures to ensure safe and uninterrupted use of the Seaway, a policy affirmed by the Congress in its Appropriation Committee reports.

Construction Program

Acquisition of plant, property and equipment totaled $1.4 million in both FYs 1998 and 1999.

The primary capital expenditures in FY 1998 included $419,000 for stiffleg derrick improvements, $290,000 for recess drainage improvements, and $256,000 to upgrade mechanical lock equipment.

In FY 1999, the largest capital expenditures were $405,000 for the maintenance building renovation, $266,000 for the Vessel Traffic Control (VTC) Center relocation, and $134,000 for the lock status display upgrade.

The maintenance building renovation included construction of a two-story addition and renovation of a portion of the adjacent interior space to provide office space for Office of Engineering and Strategic Planning personnel, to add a women’s bathroom/locker room and to expand the existing men’s bathroom/locker room and the employees' lunchroom.

The VTC Center relocation involved renovating the Oberlin Building at Eisenhower Lock and relocating the VTC Center and several offices from the adjacent McCann Building. The work included renovation of the interior space, moving radio, telephone, closed circuit television and computer equipment/systems and making improvements required for installation of the new computerized Traffic Management System. The work was accomplished both by contractors and by Corporation personnel.

The electrical lock equipment upgrade project for 1999 was for the lock status display system, which utilizes Programmable Logic Control technology to monitor the status of the lock operating equipment at Eisenhower and Snell locks. This information is provided to the Vessel Traffic Controllers. The new system will be expanded to include water level, fire alarm, and security information to the VTC Center as well as machinery and equipment operating information to Maintenance personnel for use in troubleshooting problems.

Stoplog Testing and Rehabilitation

The Corporation maintains stoplogs and bulkheads, for both locks, which are used to form temporary dams when it is necessary to dewater a lock or portions thereof for scheduled or emergency maintenance. A comprehensive testing and repair program was accomplished in 1998 to assure the structural integrity of the stoplogs and bulkheads. This safety-related project was recommended by the U.S. Army Corps of Engineers (Corps) and is consistent with their regulation which requires similar programs be conducted for closure structures at all Corps locks and dams. The FY 1998 cost for this extraordinary operating project was $517,000. It was completed in FY 1999 for $282,000.

Wage Negotiations

The Corporation negotiated with the bargaining unit employees (AFGE Local 1968) on a wage agreement totaling 16.25 percent over four years, beginning October 1999. The four-year contract will assist the Corporation with its financial planning. The new contract marked the first time a wage contract had been negotiated for a four-year period.

Significant Future Costs

Since operations and maintenance represent the bulk of the SLSDC’s expenditures, five-year capital and maintenance plans have been developed for FYs 2000 – 2004. The objective of developing a comprehensive five-year plan for capital improvements, operations, and maintenance activities is to improve the SLSDC's ability to invest in projects critical to maintaining infrastructure and operational efficiency. The perspective offered by viewing and evaluating resource requirements over a long term is particularly vital in this era of funding reductions. The current five-year plan projects $11 million in capital expenditures, factoring in the full implementation of the recent Corps recommendations. In addition to the estimated $5 million resulting from the Corps recommendations, the SLSDC plans on spending $500,000 on the Automatic Identification System/Global Positioning System project. Other major projects include $500,000 for the purchase of heavy equipment and $500,000 to construct a drydock facility at Snell Lock.

The main project in FY 2000 is for the construction of the Lock Structures Maintenance Shop. The plan is to construct a shop at the south side of Snell Lock in which to perform maintenance work on large structures, machinery and equipment such as stoplogs, fender booms, culvert valves, bullgears, and the SLSDC's workboat PERFORMANCE. This facility will be used primarily for blast cleaning and painting these items. Equipment, which has been designed to conform to federal and state regulations for these operations, will be purchased for use in this facility. Plans are to purchase portable equipment so that it can be removed from this building for use in the locks during winter maintenance for blast cleaning and painting work on the miter gates and vertical lift gate. Research of available technologies and equipment, design work and cost estimates are preliminary at this time. Cost estimates indicate the total project cost will be between $500,000 and $700,000 with the building costing approximately 60 percent and the equipment 40 percent.

Lock Survey and Evaluation

In FY 1998, for a cost of $85,000, the Corporation entered into an interagency agreement with the U.S. Army Corps of Engineers for it to perform a survey and evaluation of the two U.S. Seaway locks. The Corps set up a team consisting of structural, mechanical and electrical engineers. The team inspected both locks during the navigation season as well as when they were dewatered for winter maintenance. These inspections were carried out in conjunction with Corporation personnel. Its work also included the review of drawings, meetings with SLSDC engineering and maintenance personnel, review of maintenance records/ practices and observing lock-operating procedures. The final report was submitted in December 1999 in which the Corps concluded that the U.S. Seaway locks structures and equipment were generally well maintained and in good operating condition.

The Corps made recommendations for capital and maintenance improvements, modifications to maintenance practices, additional monitoring and testing programs and changes to operating procedures. The full recommendations made by the Corps will be incorporated into the Corporation's five-year capital and special project plans as appropriate. Some of the projects may be accomplished in-house, provided they have minimal impact on normal maintenance functions, while larger ones will likely be accomplished by contract. The Corporation estimates spending in excess of $5 million over the next five years to accomplish all of the recommendations set forth in the report.

Selected Financial Indicators

(In Thousands of Dollars)

			Change	
For the Fiscal Years Ended September 30	**1999**	**1998**	**Dollars**	**Percent**
Operating Revenues	**10,531**	**10,323**	**208**	**2**
Appropriations expended	10,059	9,775	284	3
Other	472	548	(76)	(14)
Operating Expenses	**11,567**	**11,333**	**235**	**2**
Personnel services and benefits	9,018	8,883	135	2
Other	2,549	2,450	100	4
Imputed Financing/Expenses				
Imputed financing	620	620	—	—
Imputed expenses	620	620	—	—
Total Assets	**100,911**	**102,320**	**(1,409)**	**(1)**
Time Deposits in Minority Banks	**11,861**	**12,084**	**(223)**	**(2)**
Short-term	11,567	10,672	895	8
Long-term	294	1,412	(1,118)	(79)
Interest Income (Minority Banks)	**632**	**697**	**(65)**	**(9)**

FY 1999 ACCOMPLISHMENTS

Operations and Safety Initiatives

Enhanced Seaway Inspections of Foreign-Flag Vessels

The Enhanced Seaway Inspection (ESI) program contributes to safe navigation and protection of the environment. The safety and environmental vessel screening programs, conducted jointly with Canadian SLSMC inspectors in Montreal, Quebec, accomplish the port/state vessel inspections as well as ballast water tests.

Each year, approximately 300 foreign flag vessels from more than 50 nations transit the U.S. locks and channels of the Seaway to and from the major port facilities in the Great Lakes. Prior to 1998, ship inspections were conducted at the U.S. Seaway locks in Massena, N.Y., which caused safety concerns as well as inefficient traffic flow. SLSDC, working closely with the U.S. Coast Guard (USCG), reinvented the inspection program in 1998. The major goal of the revised program was to perform 100 percent of enhanced ship inspections at Montreal, for the first inbound transit of each ocean vessel in advance of entering U.S. waters. The goal was achieved in 1999 with 289 ESIs performed, 254 by SLSDC inspectors and 35 by USCG marine inspectors. The enhanced vessel inspection program exemplifies the “One DOT” goal of partnering for excellence, as well as intermodal cooperation.

The ballast water exchange program continues to be an important function of the ship inspection program. These inspections are carried out concurrently with the ESIs, by SLSDC personnel in Montreal and by USCG personnel at Snell Lock in Massena. These programs support the Oil Pollution Act of 1990 and the Non-Indigenous Aquatic Nuisance Prevention and Control Act of 1990.

Seaway AIS/GPS Project

Since 1992, the Corporation has worked with the Department of Transportation’s Volpe National Transportation Center and Canadian partners to design and implement state-of-the-art Automatic Identification System (AIS) / Global Positioning System (GPS) navigation technology.

The SLSDC’s AIS/GPS project is designed to apply cutting-edge universal AIS technology to marine navigation on the St. Lawrence River and Great Lakes. This AIS/GPS project represents a major step forward in marine navigation technology. When it is fully operational during the 2001 navigation season, this system will provide vessels and vessel traffic controllers with highly accurate, real-time access to the position of all commercial vessels in their vicinity. This new technology will greatly enhance safety and improve the efficient transit of vessels through the System.

The Corporation's Canadian counterpart, the SLSMC, has shared costs during the design phase of this project. For the implementation phase of the project, the two Seaway entities have requested and their industry partners have agreed to contribute 50 percent of the final cost of this project over the next two years. During 1999, efforts focused on the integration of AIS with the newly installed binational unified TMS. Field-testing of the AIS/GPS in the St. Lawrence River will occur during the 2000 navigation season. The goal for full Seaway AIS deployment is the 2001 navigational season.

Binational Traffic Management System

The binational Traffic Management System (TMS) is a joint project of the two Seaway entities to implement a fully integrated computerized traffic management system with the goal of providing a single source for system information for Seaway customers (referred to as "one-stop-shopping"). The program, undertaken in 1998, involved the upgrade of physical structures and existing computer systems at the three centers, two Canadian and one U.S. The system provides users, both external and internal, a seamless source of vessel transit information, such as the transit time from below Montreal to the middle of Lake Erie.

The new system became fully operational with the opening of the 1999 navigation season on March 31, 1999. The Seaway entities continue to refine the system software and plan to incorporate the capability of displaying vessel positions from ship-borne AIS units when that program becomes operational.

SLSDC Vessel Traffic Control Center in Massena, N.Y.

Navigation Aids / Channel Sweeping

In 1999, the SLSDC procured state-of-the-art Differential Global Positioning System (DGPS) based hydrographic survey equipment, hardware and software, to perform periodic soundings in the navigation channel to ensure adequate water depth for vessel transits. With the assistance of the Volpe National Transportation Systems Center, the new equipment was integrated with the DGPS buoy positioning equipment, first deployed in 1993, to allow access from a single Windows-based computer.

The DGPS buoy positioning system effectively replaced traditional sextant measurements, which were both time-consuming and highly dependent on good visibility. The DGPS buoy positioning system significantly reduces the average time needed to put a buoy on station regardless of location and visibility. It also enables the SLSDC's Marine Services Division to make periodic position surveys of floating navigational aids to ensure they are on station. The use of this technology has enabled the Corporation to perform critical navigational aids and channel sweeping functions in a more efficient manner as well as enhance safety.

SLSDC maintenance staff place navigation aids along the St. Lawrence River using DGPS technologies.

Seaway Emergency Response Plan

The Corporation's Emergency Response Plan, unveiled in June of 1989 and updated annually, was developed to serve as a regional joint response blueprint in the event of an oil spill, hazardous substance spill or vessel collision in the St. Lawrence River. The plan, which includes a computerized oil spill model, covers the 100-mile U.S. portion of the river, between Massena and Cape Vincent, N.Y.

The Corporation has immediate responsibility for initiating the Emergency Response Plan and overseeing an incident until the U.S. Coast Guard arrives on the scene. Responsibility is immediately shifted to the U.S. Coast Guard in their role as Federal On-Scene Coordinator.

The plan incorporates a number of local, state, and federal agencies that would be needed in an emergency situation. Since 1989, the Corporation has participated in or sponsored 11 annual simulation exercises as part of the Emergency Response Plan. These annual simulated drills are essential to maintaining readiness for emergency situations, swift response requirements, and problem resolution by the Corporation and local, state and federal agencies.

On June 23-24, 1999, SLSDC participated in an exercise in Brockville, Ontario, sponsored jointly by the U.S. and Canadian Coast Guards, designed to improve preparedness of agency participants.

1999 Winter Maintenance Program

The Corporation's 1999 winter maintenance program at the two U.S. Seaway locks was one of the most extensive in recent years, entailing expenditures of approximately $600,000 and a workforce of 85 employees.

A major milestone was achieved when concrete repairs at Eisenhower Lock were completed. It marked the end of rehabilitation that the U.S. Army Corps of Engineers said in a 1994 study was essential to ensure the facility's structural stability. The 1999 concrete work involved the replacement of 380 cubic yards of concrete at a cost of $199,000.

The Corps initially estimated that the rehabilitation would require the replacement of 900 cubic yards at a cost of $1 million if the work was completed using SLSDC staff. During the 1994-95, 1995-96, and 1998-99 winter maintenance programs, the SLSDC replaced a total of 1,600 cubic yards of concrete over a three-year period using SLSDC staff at a cost of $660,000.

Besides concrete repairs, the winter maintenance program involved a broad range of mechanical and electrical preventative maintenance that also included the dewatering of Snell Lock. During the winter program, a visiting team from the Corps of Engineers observed some of the work in progress, as did Deputy Secretary of Transportation Mortimer L. Downey.

Customer Service Initiatives

ISO 9002 Certification of SLSDC

Delivering quality service to customers is a major goal of the Corporation. An important initiative to achieve excellence in service delivery is gaining International Standards Organization (ISO) 9002 certification for Seaway programs. ISO 9002 is an international standard for quality management and refers to a group of standards that require an organization to establish and document processes that ensure quality, educate workers about them, oversee the process to provide confidence that they are being followed and producing results, and make continuous improvements.

London-based Lloyd's Register of Quality Assurance is the independent accrediting agency retained by the Corporation to perform program assessments for certification. The SLSDC is one of the first agencies to apply these business standards to the federal government. In 1998, the Corporation's vessel inspection program was certified, followed in 1999 by vessel traffic management, aids to navigation, personnel, administrative support and management information services. ISO certification has led to performance improvements, marketing advantages, better customer service, an improved management process, better teamwork, and closer coordination with SLSDC goals and objectives.

The SLSDC's lock operations and maintenance programs are scheduled for assessment in 2000. As a result of this major initiative, our customers are assured that the Corporation has an internationally recognized quality management system in place to meet their needs for a safe, reliable, and competitive waterway.

Customers Pleased with SLSDC Services

To continuously evaluate and improve operating procedures, regulations, and policies to better serve the customer, the SLSDC obtains customer feedback from vessel crews, through surveys, to assess primary customer reaction to the expertise and quality of operating services.

The 1998 survey results, published in 1999, were virtually identical to the results from a similar survey conducted in 1995, and the Corporation retained a "good" to "excellent" service rating (4.5 out of 5) from Seaway users. Seaway users also expressed high satisfaction with traffic control communications, the capability and courtesy of Corporation personnel, Seaway requirements information, transit time, lockage procedures, and tug services. The Corporation will survey vessel operators again, as well as agents for the first time, during the 2000 navigation season.

The Corporation, in coordination with the Canadian SLSMC, initiated the first survey during the 1995 navigation season. Comments in the initial survey were instrumental in shifting ship inspections from the locks in Massena, N.Y., to Montreal, Quebec. Conducting ship inspections in Montreal reduced routine vessel delays by 50 percent, from 4 to 8 hours, down to 2 to 4 hours. It should be noted that daily vessel operating costs average $500 an hour, and the reduction in delays improves the vessel operator's bottom line and enhances the competitiveness of the waterway.

Seaway Nightcast Program

Since the mid-1980s, the Corporation has offered users a subscription-based service called Seaway Nightcast. The daily service details inbound (westbound) ocean vessel movements through the U.S. locks in Massena, N.Y., to assist in matching cargoes and vessels for the outbound voyage. The information is broadcast to subscribers via e-mail. The information, transmitted after midnight each day, covers vessel activity for the previous 24-hour period. Details include vessel passage by name, intended ports of call within the Great Lakes, a coded identification of the vessel agent, and known details of the outbound voyage. By relaying this information upon entry of the vessel into the Great Lakes Seaway System, potential users have several days to contact the shipping agent concerning export movements.

Ship Drawing Reviews

The Corporation offers, free of charge, a review of ship drawings for new buildings or revisions, encouraging owners to fit vessels to Seaway dimensions during construction. In addition, the Corporation provides advice and guidance to developers, shipping companies or agents on modifications necessary to meet requirements for transiting the Seaway.

Since the review services were introduced in 1992, Seaway marine experts have accommodated an average of 100 review requests a year. The free service has been a contributing factor in attracting new ocean freighter and passenger cruise traffic for the Seaway.

Seaway Tie-Up Service

To accommodate vessel operators who have elected not to install or use landing booms, the two Seaway entities initiated tie-up services in 1995 on a cost-recovery basis. The fee for the service continues to be $1,000 Canadian for each round trip through the Montreal-Lake Ontario and Welland Canal sections. In 1999, 158 vessels took advantage of this service.

Seaway Port Pacesetter Awards

In the spring of 1999, the Corporation announced the recipients of its annual Seaway Port Pacesetter Award for U.S. Great Lakes/Seaway ports and port terminals that posted tonnage increases in international cargo handled during the 1998 Seaway navigation season, versus 1997 levels.

Nine port organizations and seven port terminals qualified for the award, the highest number awarded in the history of the Pacesetter Award. The nine ports receiving the Pacesetter were: Cleveland-Cuyahoga County (Ohio) Port Authority; Detroit-Wayne County (Mich.) Port Authority; Duluth (Minn.) Seaway Port Authority; Erie (Pa.)-Western Pennsylvania Port Authority; Green Bay (Wis.) Port and Solid Waste Management Department; Illinois International Port District, Port of Chicago (Ill.); Port of Milwaukee (Wis.); Port of Oswego (N.Y.) Authority; and Toledo-Lucas County (Ohio) Port Authority.

The seven award-winning U.S. Great Lakes/Seaway port terminals were: AGP Grain Ltd. at the Port of Duluth; The Andersons at the Port of Toledo; Ceres Terminal at the Port of Cleveland; Federal Marine Terminals at Burns International Harbor in Portage, Ind.; K&K Warehousing at the Port of Menominee, Mich.; Lake Superior Warehousing at the Port of Duluth; and Mountfort Terminal at the Port of Erie.

Customer Development Initiatives

Seaway Trade Mission to Norway and Germany

SLSDC Administrator Jacquez led a delegation of U.S. and Canadian Great Lakes Seaway System executives on a Seaway Trade Mission to Oslo, Norway, and Hamburg, Germany, June 6-16, 1999.

Both stops represented return visits for the Seaway to these large European shipping centers. Past Seaway Trade Missions visited Oslo in 1987 and 1996, and Hamburg in 1988, 1990, 1992, and 1997.

In Oslo, the SLSDC exhibited at the Nor-Shipping '99 Exhibition, one of the largest maritime related exhibitions in the world. The purpose of the trip was to encourage ship owners, operators, and builders to build Seaway-fitted vessels and to brief them on the latest regulatory and technical requirements for ships that want to trade in the Great Lakes St. Lawrence Seaway System. In Hamburg, a similar message was presented, in addition to one-on-one meetings with cargo interests and port facilities.

International Canals and Inland Waterways

The Corporation hosted the fourth biennial meeting of the International Canals and Waterways Chief Executive Officers group in Chicago, Ill., May 17-19, 1999.

The meeting, attended by 12 waterway and canal executives, featured presentations on operational topics including management practices, operation and maintenance procedures, maritime safety issues, environmental protection issues, international maritime trade development, pilotage, tolls, and application of advanced technology in the operation of international commercial waterways.

The SLSDC organized the CEO group in 1993, and held its first meeting that year in London. In 1995, the group met in Istanbul, and in 1997, it met at the Panama Canal.

FEDERAL OSHIMA Ceremony

The FEDERAL OSHIMA, the first of seven new Seaway-size ocean ships built for Fednav, Ltd., by the Oshima Shipbuilding Co., Oshima, Japan, was officially named at a special ceremony in late September 1999. Fednav is investing significantly in its Seaway-sized fleet, having built or committed to 12 new vessels over the past four years. Fednav, Ltd., is the largest owner and operator of ocean vessels using the Great Lakes Seaway System.

Corporation Administrator Jacquez accompanied Fednav Chairman and CEO Laurence Pathy to Japan for the naming ceremony as well as to participate in meetings with shipbuilders who are either building Seaway size vessels or have the potential to build Seaway-capable ships. One particular meeting resulted in a visit by the company's top executives and naval architects to the SLSDC's operational facilities in Massena, N.Y.

SLSDC Albert S. Jacquez (left) takes part in tour of FEDERAL OSHIMA at its christening ceremony in Oshima, Japan.

Seaway Management Initiatives

Jacquez Sworn-In as Eighth Seaway Administrator

On January 4, 1999, U.S. Transportation Secretary Rodney E. Slater swore in Albert S. Jacquez as the eighth Administrator of the SLSDC. President Clinton, using his recess appointment authority, named Jacquez as Administrator, effective January 4. On July 1, 1999, the nomination of Administrator Jacquez was confirmed by the U.S. Senate to a term of seven years.

Jacquez came to the Corporation with more than 15 years of management, finance, and transportation policy experience. He served as chief of staff to Congressman Esteban E. Torres of California from 1993 to 1998, where he provided oversight and guidance for all House Appropriations Committee work, including Department of Transportation appropriations. From 1990 to 1992, he served as staff director of the Housing Banking Subcommittee on Consumer Affairs and Coinage. From 1988 to 1990, he served as President and Chief Executive Officer of the Latin American Management Association, a Hispanic business trade group.

During congressional consideration of the North American Free Trade Agreement (NAFTA), he developed the legislative strategy and negotiated the substantive provisions of the North American Development Bank (NADBank) – a binational institution that finances environmental infrastructure, and provides economic development assistance and investment to communities that suffer lost jobs related to trade. NADBank has a capital base of $3 billion.

Seaway Corporation Administrators
(1954 - Present)

LEWIS G. CASTLE
January 2, 1954 - June 4, 1960

M.W. OTTERSHAGEN
March 29, 1961 - December 30, 1961

JOSEPH H. MCCANN
January 1, 1962 - April 4, 1969

DAVID W. OBERLIN
August 11, 1969 - February 27, 1983

JAMES L. EMERY
November 21, 1983 - November 21, 1990

STANFORD E. PARRIS
March 21, 1991 - April 15, 1995

GAIL C. MCDONALD
January 2, 1996 - April 11, 1997

ALBERT S. JACQUEZ
January 4, 1999 - Present

He has been listed among "The Top 100 Influential Hispanics" by Hispanic Business Magazine, and named one of "The 50 Most Influential Men in Washington" by The American Banker. He has also been a Stennis Congressional Staff Fellow, which honors senior congressional staff for outstanding leadership and commitment to public service.

A native of Los Angeles, Calif., Jacquez graduated from Whittier College, Whittier, Calif., in 1976 with a bachelor's degree, and earned a master's degree from the Lyndon B. Johnson School of Public Affairs at the University of Texas in 1986.

Albert S. Jacquez (center) is sworn-in by Transportation Secretary Rodney E. Slater (right) on January 4, 1999, as the eighth SLSDC Administrator. Mr. Jacquez's wife, Lynn (right), holds the bible during the ceremony.

Third PBO Proposal Submitted to the Congress

On August 3, 1999, the U.S. Department of Transportation resubmitted proposed legislation to the Congress for the third time that would establish the SLSDC as a Performance Based Organization (PBO). The initial legislation to implement the PBO conversion was transmitted to the Congress in July 1996. A revised legislative proposal to establish a PBO was transmitted to the Congress in 1997. On March 4, 1996, as part of the Administration's reinventing government agenda, Vice President Gore announced plans to restructure eight federal agencies as PBOs, including the Corporation.

The central element of the PBO initiative is greater accountability through enhanced performance. The SLSDC has developed a five-year plan that commits the agency to meet certain personnel and fiscal goals. In addition, funding is directly related to performance.

The most significant changes derived from the PBO structure include an accountable senior management structure working under a performance contract, clear incentives to improve efficiencies and service to increase Seaway utilization, a more stable funding source, and increased autonomy from day-to-day departmental activities. The result will be improved long range planning for critical capital needs of aging lock facilities, build-up of emergency reserves, streamlining and reallocation of personnel resources, and reduced operating costs. The focus on the performance areas of safety, reliability, trade development, and management accountability will ensure a more efficient operation through elimination of programs and cost areas that do not fully support performance goals.

Year 2000 Certification

The SLSDC's information systems remain up-to-date and enable all offices to maintain timely and accurate reporting. All Corporation information technology systems, operating systems and physical facilities successfully completed Year 2000 (Y2K) validation in 1998 and remain fully compliant to date. The Corporation was an active participant in the Department of Transportation's Y2K outreach task force and continued vigorous outreach activities until the key rollover date of January 1, 2000.

The Corporation also prepared a Business Continuity and Contingency Plan, which concentrated its attention on continuance of regular business functions including winter maintenance, administrative activities, and protection of Corporation facilities against winter elements. All systems remained compliant on the critical rollover dates of January 1, 2000, and February 29, 2000.

Transportation Secretary Slater Dedicates Cocci Center

On April 5, 1999, U.S. Secretary of Transportation Rodney E. Slater visited the Corporation's facilities in Massena, N.Y., and dedicated the SLSDC's newly upgraded vessel traffic control center at Eisenhower Lock.

The facility was renamed the "Erman J. Cocci Center" in honor of the Corporation's Associate Administrator. Cocci has served as the Corporation's top on-site executive in Massena over the past 15 years.

The Cocci Center now features a fully automated computer system, operated by the Corporation, which will improve vessel tracking capabilities on the Seaway, making maritime travel safer and more efficient.

SLSDC Albert S. Jacquez (left) and Transportation Secretary Rodney E. Slater (right) unveil a plaque to SLSDC Associate Administrator Erm Cocci (center) on April 5, 1999, in Massena, N.Y., renaming the Corporation's vessel traffic control center as the "Erman J. Cocci Vessel Traffic Control Center."

Garrett A. Morgan Educational Program

In addition to the "Adopt-a-School" program with Jefferson Elementary School in Massena, N.Y., SLSDC staff in Massena continued their partnering efforts with the Tech Prep/School-to-Work-Initiative with Massena Central High School and Clarkson University School of Business, to prepare high school juniors and seniors for post school employment. The Corporation provides "shadowing" opportunities for students at its facilities and donated surplus computer equipment to the program. A partnership between the Tech Prep Program and the Garrett A. Morgan Transportation and Technology Futures Program will focus on preparing students for transportation careers.

During 1999, the SLSDC continued its long-term project with 52 fifth grade pupils, who are developing a St. Lawrence Seaway System website, titled "By Kids, For Kids." In February 1999, 22 Tech Prep seniors from Massena Central High School made a multi-team presentation about the Tech Prep Program to Transportation Deputy Secretary Mortimer Downey during his visit to Massena.

1999 NAVIGATION SEASON IN REVIEW

On March 31, the St. Lawrence Seaway was opened for the 1999 navigation season and its 41st year of operation as a deep draft waterway. The System closed on December 25, ending the 270-day season. U.S. international trade through the Montreal-Lake Ontario section of the St. Lawrence Seaway was at 11.4 million metric tons, or 4 percent below the 1998 level. Total cargo traffic through the Montreal-Lake Ontario section was 36.4 million metric tons, a 7 percent decline from 1998.

The reduced cargo was expected due to changes in the steel industry. In 1998, a combination of a strong U.S. economy and weak Asian and Russian economies resulted in a surge of imported steel, an increase of 61 percent over 1997. Efforts to curb alleged dumping coupled with inventory accumulation built by U.S. and Canadian importers in 1998 resulted in a decrease in imported steel of 2.5 million metric tons or 35 percent in 1999. The decline in imported steel accounts for virtually the entire 7 percent decline in total cargo. The inventory buildup in 1998 also attributed to a 4 percent decline in other steel related products such as iron ore.

U.S. grain exports through the St. Lawrence Seaway totaled 6.7 million metric tons, an increase of 9 percent over 1998. Total grain shipments were 13.6 million metric tons, the second highest level in nine years. In addition, Total vessel transits reached 3,168, the highest level in 13 seasons.

Calendar Year 1999 Commodity and Transit Summary

(Montreal-Lake Ontario Section)

			Change	
Commodities	**1999**	**1998**	**Tons**	**Percent**
U.S. Grain	6,653,609	6,118,905	534,704	8.7%
Canadian Grain	6,927,938	6,735,376	192,562	2.9%
Coal	266,364	191,356	75,008	3.9%
Coke	566,637	624,131	(57,494)	(9.2%)
Iron Ore	10,686,169	11,104,515	(418,346)	(3.8%)
Other Bulk	6,722,664	7,463,878	(741,214)	(9.9%)
Manufactured Iron and Steel	4,317,382	6,909,049	(2,591,667)	(37.5%)
Other General	259,275	93,488	165,787	177.3%
Containers	11,573	5,211	6,362	122.1%
Cargo Total	**36,411,611**	**39,245,909**	**(2,834,298)**	**(7.2%)**

			Change	
Vessel Transits	**1999**	**1998**	**Transits**	**Percent**
Ocean Vessels	1,282	1,410	(128)	(9.1%)
Laker Vessels	1,402	1,497	(95)	(6.3%)
Other Vessels	484	251	233	92.8%
Transit Total	**3,168**	**3,158**	**10**	**0.3%**

1999 PERFORMANCE INDICATORS

Lockage Downtime / Availability in Hours

Cause of Delay	1995	1996	1997	1998	1999	5-Year Average
Weather, Poor Visability	75.5	137.2	64.6	30.3	2.0	**61.9**
Weather, High Wind/Ice	13.0	6.2	0.6	12.9	0.0	**6.5**
Water Level/Flow	0.0	0.0	17.2	0.0	0.0	**3.4**
Vessel Incident	32.6	38.3	31.2	43.3	46.3	**38.3**
Civil Interference	0.4	1.4	2.8	10.3	0.0	**3.0**
Lock Equipment Malfunction	16.3	4.5	15.6	1.8	1.3	**8.0**
Total Delay (Hours)	**137.8**	**187.6**	**132.0**	**98.6**	**49.6**	**121.1**
Equivalent Days	5.7	7.8	5.5	4.1	2.1	**5.0**
Duration of Season (Days) *	276	273	270	277	270	**273.2**
Percent of System Availability	**98%**	**97%**	**98%**	**98.5%**	**99.2%**	**98.1%**

* Based on availability of U.S. Seaway locks only

Lockage Equipment Malfunction by Type in Hours

Type of Malfunction	1995	1996	1997	1998	1999	5-Year Average
Electrical						
Fender Boom	10.5	0.7	2.9	0.0	0.0	**2.8**
Gates	2.7	1.2	1.7	1.0	1.3	**1.6**
Valves	0.0	0.4	0.0	0.0	0.0	**0.1**
Lock Equipment	0.0	0.4	0.8	0.5	0.0	**0.3**
Subtotal	**13.2**	**2.7**	**5.4**	**1.5**	**1.3**	**4.8**
Mechanical						
Fender Boom	0.0	1.8	0.0	0.0	0.0	**0.4**
Gates	3.1	0.0	0.0	0.3	0.0	**0.7**
Valves	0.0	0.0	0.0	0.0	0.0	**0.0**
Lock Equipment	0.0	0.0	0.3	0.0	0.0	**0.1**
Subtotal	**3.1**	**1.8**	**0.3**	**0.3**	**0.0**	**1.2**
Grand Total	**16.3**	**4.5**	**5.7**	**1.8**	**1.3**	**6.0**

Celebrating 40 Years of Deep-Draft Navigation

The SLSDC hosted a weekend of special events in Massena, N.Y., June 26-27, 1999, to commemorate the 40th anniversary of the Great Lakes Seaway System.

The highlight event of the celebration was the rededication ceremony at Eisenhower Lock commemorating the original dedication on the same location and same date (June 27, 1959) when former Vice President Richard M. Nixon and Queen Elizabeth II dedicated the Seaway navigation project, which put into place the missing deepwater link between the five Great Lakes and the Atlantic Ocean.

Keynote speaker at the 40th rededication ceremony, which was attended by several hundred guests, was Congressman James Oberstar of Minnesota. He has been a long-time supporter as chief aide to one of the waterway's founding fathers—the late Congressman John Blatnik. Congressman Oberstar also represents a district that includes the largest U.S. Great Lakes port (Duluth), and he has served as chairman of the Great Lakes Maritime Task Force.

Congressman John M. McHugh of New York spoke at a dinner in Massena, N.Y., held the prior evening to commemorate the 40th anniversary. Congressman McHugh represents the North Country section of New York, including Massena.

Congressman James Oberstar (Minn.) addresses an audience attending the Seaway's 40th anniversary ceremony at Eisenhower Lock in Massena, N.Y.

Congressman John M. McHugh (N.Y.) speaks at a dinner in Massena, N.Y., held to commemorate the Seaway's 40th anniversary.

THE GREAT LAKES ST. LAWRENCE
SEAWAY SYSTEM
40TH ANNIVERSARY
1959 1999

STATEMENT ON INTERNAL ACCOUNTING AND ADMINISTRATIVE CONTROL SYSTEMS

Pursuant to Section 306 of the Chief Financial Officers Act of 1990, the SLSDC is required to provide a statement on internal accounting and administrative control systems consistent with the requirements of the Federal Managers' Financial Integrity Act (FMFIA) of 1982. An evaluation of the system of internal accounting and administrative control of the Corporation in effect during the year ended September 30, 1999, was performed in accordance with "Guidelines for Evaluation and Improvement of and Reporting on Internal Control Systems in the Federal Government", issued by the Director of the Office of Management and Budget, in consultation with the Comptroller General, as required by the FMFIA, and accordingly included an evaluation of whether the system of internal accounting and administrative control of the Corporation was in compliance with the standards prescribed by the Comptroller General.

The objectives of the system of internal accounting and administrative control of the Corporation are to provide reasonable assurance that:

- Obligations and costs are in compliance with applicable law;
- Funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and
- Revenues and expenditures applicable to agency operations are properly recorded and accounted for to permit the preparation of accounts and reliable financial and statistical reports and to maintain accountability over the assets.

The concept of reasonable assurance recognizes that the cost of internal control should not exceed the benefits expected to be derived therefrom, and that the benefits consist of reductions in the risks of failing to achieve the stated objectives. Estimates and judgments are required to assess the expected benefits and related costs of control procedures. Furthermore, errors or irregularities may occur and not be detected because of inherent limitations in any system of internal accounting and administrative control, including those limitations resulting from resource constraints, Congressional restrictions, and other factors. Finally, projection of any evaluation of the system to future periods is subject to the risk that procedures may be inadequate because of changes in conditions or that the degree of compliance with the procedures may deteriorate.

A material weakness or non-conformance is a specific instance of non-compliance with the Integrity Act. Such weakness would significantly impair the fulfillment of an agency component's mission; deprive the public of needed services; violate statutory or regulatory requirements; significantly weaken safeguards against waste, loss, unauthorized use or misappropriation of funds, property, or other assets; or result in a conflict of interest. Each material non-conformance in a financial system merits the attention of the agency head/senior management, the Executive Office of the President, or the relevant Congressional oversight committee; prevents the primary agency's financial system from achieving central control over agency financial transactions and resource balances; and/or prevents conformance of financial systems with financial information standards and/or financial system functional standards.

The results of the evaluations described in the second paragraph, assurances given by appropriate Corporation officials, and other information provided indicate that the system of internal accounting and administrative control of the Corporation in effect during the year ended September 30, 1999, taken as a whole, complies with the requirement to provide reasonable assurance that the above-mentioned objectives were achieved within the limits described in the preceding paragraph. The evaluation did not disclose any material weaknesses or non-conformances in the internal accounting and administrative control system in fiscal year 1999 and prior years.

Dembo, Jones, Healy, Pennington & Ahalt, P.C.
Certified Public Accountants and Consultants

Report of Independent Auditors
on the Financial Statements

To the Administrator of the
Saint Lawrence Seaway Development Corporation

We have audited the accompanying statements of financial position of the Saint Lawrence Seaway Development Corporation (the Corporation), a wholly-owned U.S. Government corporation, as of September 30, 1999 and 1998, and the related statements of operations and changes in cumulative results of operations, cash flows, budgetary resources and actual expenses and changes in equity of the U.S. Government for the years then ended. These financial statements are the responsibility of the Corporation's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audits in accordance with generally accepted auditing standards and the standards applicable to financial audits contained in *Government Auditing Standards,* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As described in Note 2 these financial statements were prepared in accordance with generally accepted accounting principles as set forth for Federal government corporations which constitute a comprehensive basis of accounting other than generally accepted accounting principles.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Saint Lawrence Seaway Development Corporation as of September 30, 1999 and 1998, and the results of its operations and its cash flows for the years then ended in conformity with the basis of accounting described in Note 2.

Our audits were conducted for the purpose of forming an opinion on the principal financial statements described above. We have reviewed the financial information presented in management's overview of the Corporation and the supplemental financial and management information for consistency with the financial statements and notes. The information presented in the overview and supplemental financial and management information is provided for the purposes of additional analysis. Such information has not been audited by us and, accordingly, we do not express an opinion on this information.

Dembo, Jones, Healy, Pennington & Ahalt, P.C.

December 9, 1999

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Certified Public Accountants and Consultants

Report on Compliance with Laws and Regulations and on Internal Control Over Financial Reporting Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*

To the Administrator of the
Saint Lawrence Seaway Development Corporation

We have audited the financial statements of Saint Lawrence Seaway Development Corporation (the Corporation) as of and for the years ended September 30, 1999 and 1998, and have issued our report thereon dated December 9, 1999. We conducted our audits in accordance with generally accepted auditing standards and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Compliance

As part of obtaining reasonable assurance about whether Saint Lawrence Seaway Development Corporation's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance that are required to be reported under *Government Auditing Standards*.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered Saint Lawrence Seaway Development Corporation's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide assurance on the internal control over financial reporting. With respect to the internal control over financial reporting, we obtained an understanding of the design of relevant policies and procedures and whether they have been placed in operation, and we assessed control risk. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be material weaknesses. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of prforming their assigned functions. We noted no matters involving the internal control over financial reporting and its operation that we consider to be material weaknesses.

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Dembo, Jones, Healy, Pennington & Ahalt, P.C.

Certified Public Accountants and Consultants

This report is intended for the information of the management of Saint Lawrence Seaway Development Corporation. However, this report is a matter of public record and its distribution is not limited.

Dembo, Jones, Healy, Pennington & Ahalt, P.C.

December 9, 1999

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SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION
STATEMENTS OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 1999 AND 1998

	Assets	*1999*	*1998*
Current Assets	Cash:		
	Held by U.S. Treasury	**$ 1,005,621**	$ 909,703
	Held in banks and on hand	**20,740**	118,523
	Short-term time deposits in minority banks (Note 3)	**11,567,000**	10,672,000
	Accounts receivable (Note 4)	**151,460**	210,740
	Inventories (Note 2)	**267,315**	272,989
	Other current assets	**80,000**	5,200
	Total Current Assets	**13,092,136**	12,189,155
Long-Term Investments	Long-term time deposits in minority banks (Note 3)	**294,000**	1,412,000
	Total Long-Term Investments	**294,000**	1,412,000
Plant, Property and Equipment	Plant in service (Note 5)	**155,665,118**	152,879,500
	Less: Accumulated depreciation	**(70,440,253)**	(68,047,052)
	Net plant in service	**85,224,865**	84,832,448
	Work in progress	**229,766**	1,627,189
	Total Plant, Property and Equipment	**85,454,631**	86,459,637
Other Assets	Lock spare parts (Note 2)	**612,696**	718,919
	Less: Accumulated depreciation	**(174,078)**	(155,709)
	Net lock spare parts	**438,618**	563,210
	Investment in Seaway International Bridge Corporation Ltd. (Note 6)	**7,440**	7,440
	Total Other Assets	**446,058**	570,650
Deferred Charges	Workman's compensation benefits (Note 2)	**1,623,777**	1,688,092
	Total Deferred Charges	**1,623,777**	1,688,092
	TOTAL ASSETS	**$100,910,602**	$102,319,534

The accompanying notes are an integral part of these statements.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION
STATEMENTS OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 1999 AND 1998

	Liabilities and Equity of the U.S. Government	*1999*	*1998*
Current Liabilities	Accounts payable	**$ 859,163**	$ 746,332
	Accrued annual leave (Note 2)	**678,002**	712,994
	Accrued payroll costs	**455,556**	421,173
	Deferred revenue	**—**	32,000
	Total Current Liabilities	**1,992,721**	1,912,499
Actuarial Liabilities	Workman's compensation benefits (Note 2)	**1,623,777**	1,688,092
	Total Actuarial Liabilities	**1,623,777**	1,688,092
	Total Liabilities	**3,616,498**	3,600,591
Equity of the U.S. Government	Invested Capital	**100,261,662**	101,282,690
	Cumulative results of operations (deficit)	**(2,967,558)**	(2,563,747)
	Total Equity of the U.S. Government	**97,294,104**	98,718,943
	TOTAL LIABILITIES AND EQUITY OF THE U.S. GOVERNMENT	**$100,910,602**	$102,319,534

The accompanying notes are an integral part of these statements.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION
STATEMENTS OF OPERATIONS AND CHANGES IN CUMULATIVE RESULTS OF OPERATIONS
FOR THE YEARS ENDED SEPTEMBER 30, 1999 AND 1998

		1999	*1998*
Operating Revenues	Appropriations expended	**$ 10,059,434**	$ 9,775,334
	Imputed financing (Note 9)	**620,418**	619,891
	Other (Note 7)	**471,925**	547,976
	Total Operating Revenues	**11,151,777**	10,943,201
Operating Expenses (Note 8)	Locks and marine operations	**2,436,884**	2,295,305
	Maintenance and engineering	**3,776,392**	3,574,300
	General and development	**2,519,923**	2,561,720
	Administrative expenses	**2,834,287**	2,901,540
	Depreciation	**2,421,594**	2,362,768
	Imputed expenses (Note 9)	**620,418**	619,891
	Total Operating Expenses	**14,609,498**	14,315,524
	Operating Loss	**(3,457,721)**	(3,372,323)
Other Financing Sources	Interest on deposits in minority banks	**632,316**	696,886
	Transfer from invested capital for depreciation	**2,421,594**	2,362,768
	Total Other Financing Sources	**3,053,910**	3,059,654
	Operating Revenues and Other Financing Sources Under Operating Expenses	**(403,811)**	(312,669)
	Beginning cumulative results of operations (deficit)	**(2,563,747)**	(2,251,078)
	ENDING CUMULATIVE RESULTS OF OPERATIONS (deficit)	**$ (2,967,558)**	$ (2,563,747)

The accompanying notes are an integral part of these statements.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION
STATEMENTS OF CASH FLOWS
FOR THE YEARS ENDED SEPTEMBER 30, 1999 AND 1998

		1999	*1998*
Cash Flows from Operating Activities	Operating Revenues and Other Financing Sources Under Operating Expenses	**$ (403,811)**	$ (312,669)
	Adjustment to Reconcile Operating Revenues and Other Financing Sources Under Operating Expenses to Net Cash Provided by (Used in) Operating Activities:		
	Depreciation	**2,421,594**	2,362,768
	Transfer from invested capital for depreciation	**(2,421,594)**	(2,362,768)
	Net loss (gain) on property disposals	**819**	(45,091)
	Change in assets and liabilities:		
	Decrease (increase) in accounts receivable	**59,280**	(60,846)
	Decrease in inventories	**5,674**	1,759
	Increase in other current assets	**(74,800)**	(5,200)
	Decrease (increase) in other assets	**106,223**	(17,930)
	Increase (decrease) in accounts payable	**112,831**	(60,687)
	(Decrease) increase in accrued liabilities	**(609)**	31,691
	(Decrease) increase in deferred revenue	**(32,000)**	32,000
	Net Cash Used in Operating Activities	**(226,393)**	(436,973)
Cash Flows from Investing Activities	Proceeds from property disposals	**1,528**	92,010
	Acquisition of plant, property and equipment	**(1,400,566)**	(1,417,666)
	Net decrease in time deposits	**223,000**	442,000
	Net Cash Used in Investing Activities	**(1,176,038)**	(883,656)
Cash Flows from Financing Activities	Appropriations for plant, property and equipment	**1,400,566**	1,417,666
	NET (DECREASE) INCREASE IN CASH	**(1,865)**	97,037
	Cash at beginning of period	**1,028,226**	931,189
	CASH AT END OF PERIOD	**$ 1,026,361**	$ 1,028,226

The accompanying notes are an integral part of these statements.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION
STATEMENT OF BUDGETARY RESOURCES AND ACTUAL EXPENSES (NOTE 12)
FOR THE YEAR ENDED SEPTEMBER 30, 1999

		BUDGET		
		Resources	*Obligations*	*Expenses*
Saint Lawrence Seaway Development Corporation Fund		**$25,873,597**	**$12,472,819**	**$14,609,498**
Budget Reconciliation	Total expenses			14,609,498
	Adjustments			
	Add:			
	Capital acquisitions			1,400,566
	Deduct:			
	Depreciation			(2,421,594)
	Imputed expenses			(620,418)
	Decrease in net plant in service, property disposals			(2,347)
	Decrease in inventories			(5,674)
	Decrease in other assets			(106,223)
	Less reimbursements:			
	Trust funds			(11,460,000)
	Revenues from non-federal sources			(1,104,241)
	ACCRUED EXPENDITURES			**$289,567**

The accompanying notes are an integral part of these statements.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION
STATEMENTS OF CHANGES IN EQUITY OF THE U.S. GOVERNMENT
FOR THE YEARS ENDED SEPTEMBER 30, 1999 AND 1998

		Invested Capital	*Unexpended Appropriations*	*Cumulative Results of Operations*
Balance, September 30, 1997		$102,227,792	$ —	$ (2,251,078)
	Appropriations expended		(9,775,334)	9,775,334
	Fiscal Year 1998 appropriations		11,193,000	
	Other financing sources			1,864,753
	Operating expenses, excluding depreciation and imputed expenses			(11,332,865)
	Depreciation expense			(2,362,768)
	Imputed expenses			(619,891)
	Transfer from invested capital for depreciation	(2,362,768)		2,362,768
	Capital expenditures	1,417,666	(1,417,666)	—
Balance, September 30, 1998		101,282,690	—	(2,563,747)
	Appropriations expended		(10,059,434)	10,059,434
	Fiscal Year 1999 appropriations		11,460,000	
	Other financing sources			1,724,659
	Operating expenses, excluding depreciation and imputed expenses			(11,567,486)
	Depreciation expense			(2,421,594)
	Imputed expenses			(620,418)
	Transfer from invested capital for depreciation	(2,421,594)		2,421,594
	Capital expenditures	1,400,566	(1,400,566)	—
Balance, September 30, 1999		**$100,261,662**	**$ —**	**$ (2,967,558)**

The accompanying notes are an integral part of these statements.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION
NOTES TO FINANCIAL STATEMENTS

1. The Corporation

The Saint Lawrence Seaway Development Corporation (the "Corporation"), a wholly-owned government corporation within the Department of Transportation, was created by the Wiley-Dondero Act of May 13, 1954 (68 Stat. 92, 33 U.S.C. 981) as amended. The Corporation is responsible for the development, seasonal operation and maintenance of the portion of the St. Lawrence Seaway (the "Seaway") between Montreal and Lake Erie, and within the territorial limits of the United States.

2. Summary of Significant Accounting Policies

These financial statements have been prepared to report the financial position, results of operations, and cash flows of the Corporation as required by the Chief Financial Officers Act of 1990. They have been prepared from the books and records of the Corporation in accordance with generally accepted accounting principles as set forth for federal government corporations, and the Corporation's accounting policies and procedures, which are summarized below. The accounting policies and procedures are consistent with Title 2 of the U.S. General Accounting Office's Policy and Guidance of Federal Agencies.

Inventories consist primarily of supplies which are consumed in operations and are valued at the lower of cost or market with cost being determined using the weighted-average method. The recorded values are adjusted for the results of physical inventories taken biennially.

Plant, property and equipment are stated at cost of acquisition or construction. Indirect costs incurred prior to the opening of the Seaway on April 25, 1959 have been allocated to the permanent features of the Seaway. Assets costing $5,000 or more are capitalized when they have an expected useful life of five years or more. Improvements and betterments are capitalized. Repairs and maintenance costs are expensed. The straight-line method of depreciation is used and is computed on balances in plant in service. The cost of plant retired and the accumulated depreciation are removed from the accounts on disposal. Gains or losses on disposals are credited or charged to operations.

Included in lock spare parts are certain items having an expected service life between 5 and 50 years. The cost of these items totals $247,809 at September 30, 1999. These lock spare parts are an integral part of the lock machinery that allow for replacement of parts, periodically removed from service for maintenance, without causing a shutdown of the Seaway. Effective for the fiscal year ended September 30, 1993, lock spare parts having expected service lives are depreciated over their service life. The balance of lock spare parts totaling $364,887 at September 30, 1999, consists of expendable inventory items valued at the lower of cost or market with cost being determined using the weighted-average method.

Accrued annual leave represents the value of the unused annual leave accrued to employees of the Corporation. The leave is funded and reported as an obligation.

The Corporation funds a program administered by the Department of Labor to compensate certain employees for death and disability resulting from performance of duty injuries or illnesses as set forth in the Federal Employees Compensation Act (FECA). As provided by FECA, employees and certain dependents are beneficiaries for various periods that can extend to life. The Corporation recognizes current costs of the program on an accrual basis and expenses those costs in the year the benefits are due. Effective with fiscal year 1994, the actuarial liability of these benefits are recognized and recorded in these statements. The liability and deferred charge recorded reflects the actuarial liability as determined by the Department of Labor.

Seaway Tolls -The Water Resource Development Act of 1986 (Public Law 99-662) required the Corporation to turn over U.S. Seaway tolls charged on commercial vessels to the Harbor Maintenance Trust Fund (the "Fund"). Annual appropriations from the Fund are used to meet operation and maintenance expenses. The Act further required the U.S. Treasury to rebate the tolls to the shippers from the Fund. Public Law 103-331, dated September 30, 1994, eliminated the requirement to collect and rebate these tolls effective October 1, 1994.

Budget Authority -The Corporation was apportioned authority by the Office of Management and Budget (OMB) to obligate a maximum amount of $12,660,000 for fiscal year (FY) 1999, $11,460,000 from the Fund (Public Laws 105-277 and 106-51), $300,000 from the Corporation's unobligated balance, and $900,000 from non-federal revenues. Actual obligations, in contrast to the accrued costs stated in the Statement of Operations, totaled $12,472,819 for FY 1999. The Corporation's unobligated balance at September 30, 1999 totaled $13.4 million including $3.2 million unused borrowing authority. For FY 2000, Congress appropriated $12,017,000 (Public Law 106-69) for operations and maintenance expenses from the Fund. In addition, authority to obligate $900,000 of non-federal revenues has been apportioned by OMB for FY 2000.

Statement of Cash Flows - For purposes of financial reporting, the Corporation considers cash to be cash held in the U.S. Treasury, cash in banks and cash on hand.

3. Time Deposits in Minority Banks

The Corporation maintains insured deposits in a number of minority banks throughout the United States to help expand opportunities for minority business enterprises. These deposits consist mainly of the Corporation's unobligated balance, which is retained for emergency situations.

4. Accounts Receivable

The Corporation has not provided for an allowance on uncollectible receivables because prior losses have been insignificant. Receivables as of September 30, 1999 and 1998 are as follows:

	1999	*1998*
Due from concession contracts	**$ 39,240**	$ 31,921
Interest on deposits in minority banks	**36,554**	47,568
Reimbursable work	**156**	14,558
Other	**75,510**	116,693
Total	**$151,460**	$210,740

5. Plant in Service

Plant in service as of September 30, 1999 and 1998 is as follows:

		1999		*1998*	
Plant in Service	*Estimated Life (Years)*	*Cost*	*Accumulated Depreciation*	*Cost*	*Accumulated Depreciation*
Lands in fee	N/A	**$ 867,526**	**N/A**	$ 867,526	N/A
Land rights & relocations	95	**5,639,064**	**2,116,647**	5,639,064	2,057,436
Locks & guidewalls	40-100	**75,249,118**	**33,695,185**	73,793,693	32,716,409
Roads & bridges	50	**9,147,306**	**7,022,697**	9,060,530	6,841,342
Channels & canals	95	**36,870,221**	**13,681,799**	36,870,221	13,294,662
Public use facilities	50	**892,157**	**518,999**	892,157	501,156
Navigation Aids	10-40	**2,939,691**	**2,024,433**	2,939,691	1,951,530
Buildings, grounds & utilities	50	**12,118,435**	**4,126,449**	11,286,297	3,896,522
Permanent operating equipment	5-40	**11,941,600**	**7,254,044**	11,530,321	6,787,995
TOTAL PLANT IN SERVICE		**$155,665,118**	**$ 70,440,253**	$152,879,500	$ 68,047,052

Plant in service includes costs of certain features of the Seaway International Bridge Corporation, Ltd., which is discussed in Note 6. These features include land rights and relocation costs incurred in removing the old bridges, which were a hindrance to navigation, and in building the superstructure of the South Channel Bridge. The gross amounts of $3,897,379 in land rights and relocations, and $4,853,320 in roads and bridges have been depreciated accordingly.

6. Investment in the Seaway International Bridge Corporation, Ltd. (SIBC)

The Corporation owns, on behalf of the U.S. Government, 50% of SIBC, a subsidiary of The Federal Bridge Corporation Ltd., a federal Crown Corporation of Canada. Ownership consists of debenture bonds payable to the Corporation with face values totaling $8,000. The net annual income from the SIBC, after all operating expenses, is divided equally between both parties. The Corporation's portion, if any, is retained in escrow by SIBC to fund structural repair costs to the South Channel Bridge as provided in the Corporation's Enabling Act. Any revenue received by the Corporation will be returned to the U.S. Treasury as miscellaneous receipts. No revenue from the SIBC has been received since 1961.

7. Other Revenues

Other revenues for the years ended September 30, 1999 and 1998 consist of the following:

	1999	*1998*
Concession operations	**$272,022**	$271,203
Shippers payments for damages to locks	**49,989**	31,016
Rental of Administration Building	**57,398**	48,336
Vessel towing services	**36,355**	93,634
Pleasure craft/non-commercial tolls	**34,392**	35,190
Miscellaneous (net)	**21,769**	68,597
Total	**$471,925**	$547,976

Shippers' payments for damages are reported net of direct materials and direct labor costs. Reimbursements for direct materials and direct labor are recorded as reductions of the related expense accounts.

8. Operating Expenses by Object Class

Operating expenses by object class for the years ended September 30, 1999 and 1998 are as follows:

	1999	*1998*
Personal services and benefits	**$ 9,018,350**	$ 8,883,358
Travel and transportation	**185,734**	217,754
Rental, communications and utilities	**454,154**	429,178
Printing and reproduction	**16,898**	29,429
Contractual services	**1,124,686**	1,131,533
Supplies and materials	**680,356**	591,827
Equipment not capitalized	**86,225**	49,122
Loss on property disposals	**936**	651
Uncollectible accounts	**147**	13
Subtotal	**$11,567,486**	$11,332,865
Depreciation expense	**2,421,594**	2,362,768
Imputed expenses	**620,418**	619,891
Total Operating Expenses	**$14,609,498**	$14,315,524

9. Retirement Plans

Retirement Plans consist of the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). FERS went into effect, pursuant to Public Law 99-335, on January 1, 1987. Employees hired after December 31, 1983 are automatically covered by FERS and Social Security while employees hired prior to January 1, 1984, elected to either join FERS and Social Security or remain in CSRS. A primary feature of FERS is that it offers a savings plan to which the Corporation automatically contributes 1 percent of pay and matches any employee contributions up to an additional 4 percent of pay. For employees hired since December 31, 1983, the Corporation also contributes the employer's matching share for Social Security. Effective with fiscal year 1997, the Corporation recognizes and records the cost of pensions and other post-retirement benefits during employees active years of service, based on cost factors provided by the Office of Personnel Management (OPM). These costs are recorded as both an expense paid by another entity and an imputed financing source to the receiving entity, therefore offset each other with no impact upon the Corporation's net position.

Contributions to the retirement plans and Social Security for the years ended September 30, 1999 and 1998 are as follows:

	1999	*1998*
Civil Service Retirement System	**$ 282,036**	$ 283,683
Federal Employees Retirement System:		
Automatic contributions	**405,557**	393,731
Matching contributions	**118,907**	117,094
Social Security	**252,430**	234,821
Total	**$1,058,930**	$1,029,329

10. Contingencies and Commitments

The claim from a former employee that was pending on September 30, 1997 was settled in fiscal year 1998 with the Corporation prevailing, however an appeal is still pending. As of September 30, 1998, a claim from a contractor was pending before the U.S. Department of Transportation Board of Contract Appeals against the Corporation. The claim was settled in January 1999 for the amount of $32,000. In addition to the current liabilities at September 30, 1999 and 1998 there were undelivered orders and contracts amounting to $925,321 and $1,392,404, respectively.

11. Related Party Transactions

The Corporation receives rental payments for office space provided to U.S. Immigration and Naturalization Service, the U.S. Coast Guard and the Internal Revenue Service at its administration building in Massena, New York. For the years ended September 30, 1999 and 1998, revenue totaled $54,681 and $45,662, respectively.

In fiscal year 1998, the Department of Transportation's (DOT) rent budget was decentralized, making each mode responsible for direct rental payments to the General Services Administration. Prior to this fiscal year, DOT was responsible for rental payments for all headquarter space. The Corporation made rental payments for our Washington, D.C. office totaling $202,865 and $197,469 for fiscal years 1999 and 1998, respectively.

The Corporation has entered into reimbursable agreements with certain federal agencies to provide services and equipment to the Corporation. Amounts due under reimbursable agreements with federal agencies for FY 1999 and FY 1998 were as follows:

	1999	*1998*
Volpe National Transportation System Center	**$320,000**	$ 0
U.S. Army Corps of Engineers	**0**	102,600
Department of Commerce	**35,000**	35,000
Surface Transportation Board	**6,305**	20,000
Office of the Secretary of Transportation	**3,580**	4,210
United States Coast Guard	**1,000**	851
Total	**$365,885**	$162,661

Accounts payable at September 30, 1999 and 1998 include $563,950 and $500,458 respectively, of amounts payable to the U.S. Government.

In fiscal years 1999 and 1998, the Corporation accrued costs of $52,789 and $53,157, respectively, to the St. Lawrence Seaway Management Corporation for administrative services related to tolls and statistics.

12. Statement of Budgetary Resources and Actual Expenses

The Statement of Budgetary Resources and Actual Expenses presents budget information as reported on the Corporation's "Report on Budget Execution" SF-133 and reconciles accrued expenditures from that report to expenses as reported in the accompanying financial statements.

Budget resources of $25,873,597 consist of the Corporation's unobligated balance of $13,223,263 brought forward from October 1, 1998, and reimbursements earned of $12,564,241 and recoveries of prior year's obligations of $86,093 during FY 1999.

IN MEMORIAM

Ronald C. Rudolph

On July 29, 1999, Ronald C. Rudolph, the Saint Lawrence Seaway Development Corporation's Great Lakes trade development representative in Chicago for 15 years, passed away following a four-month battle with cancer. He was highly respected by his colleagues at the Seaway Corporation and by maritime and trade industry leaders throughout the Great Lakes Seaway System.

His presence and hard work in the Great Lakes/Seaway maritime community helped promote the Seaway System to U.S. and Canadian customers. Over the years, Ron had established important contacts throughout the System, from Duluth to Montreal. Ron also represented the Seaway Corporation and the Great Lakes Seaway System at numerous domestic and international shipping and trade-related exhibitions. His expertise and friendly demeanor will be greatly missed.

Prior to working with the Seaway Corporation, Ron worked for the Chicago Association of Commerce and Industry, and served as an aide to the former Illinois Senator Charles Percy.

SLSDC STRATEGIC PLAN

Introduction

The Saint Lawrence Seaway Development Corporation (Corporation) (SLSDC) is a wholly owned government corporation created by statute May 13, 1954, to construct, operate and maintain that part of the St. Lawrence Seaway between the Port of Montreal and Lake Erie, within the territorial limits of the United States. Trade development functions aim to enhance Great Lakes/St. Lawrence Seaway System utilization without respect to territorial or geographic limits.

The SLSDC coordinates its activities with its Canadian counterpart particularly with respect to rules and regulations, the Tariff of Tolls, overall day-to-day operations, traffic management, navigation aids, safety, environmental programs, operating dates, and trade development programs. The unique binational nature of the System requires 24-hour, year-round coordination between the two Seaway entities.

Since March 4, 1996, the SLSDC has been participating in the process of conversion to a Performance Based Organization (PBO) under the auspices of the National Performance Review (NPR). The process involves oversight by the NPR, the Office of Management and Budget (OMB), and the Department of Transportation (DOT) Office of the Secretary (OST). Incorporating the PBO plan structure into the SLSDC's Strategic Plan document is the first significant revision of the Corporation Strategic Plan published in October 1994.

Legislative enactment of the PBO structure requires congressional authorization. Pending that action, the Corporation is pursuing the PBO plan within current legislative authority and through the appropriations process. The PBO program plan established four performance areas that form the basis for this revised SLSDC strategic plan and goals that link well with the Department goals and management strategies as reflected on the table on the following page.

External Factors/Basis for Data Reported

External factors affecting SLSDC performance and all strategic goals include: vessel incidents due to mechanical failure and human error; weather conditions; global economic factors affecting demand, production, and pricing of commodities and vessel services; and federal policy decisions by the United States and Canada.

The Seaway System and related operations are on a calendar year (CY) basis from late March to late December. In accordance with calendar year operations and the PBO operating plan, both CY and fiscal year (October 1 - September 30) (FY) data are reported as appropriate.

SLSDC Performance Areas
Compared to DOT Goals and Strategies

SLSDC Performance Areas	Perf. Area No. 1 Safety Environment	Perf. Area No. 2 Reliability Availability	Perf. Area No. 3 Trade Development	Perf. Area No. 4 Management Accountability
DOT Goals and Strategies:				
Safety	🚢	🚢	🚢	🚢
Mobility	🚢	🚢		🚢
Economic Growth			🚢	🚢
Human and Natural Environment	🚢			🚢
National Security	🚢	🚢		🚢
Organizational Excellence	🚢	🚢	🚢	🚢

Vision Statement

Ensure the structural viability of the U.S. Seaway navigation facilities and promote the Great Lakes St. Lawrence Seaway System.

Mission Statement

Serve the U.S. transportation system by improving the operations and maintenance of a safe, reliable, and competitive deep draft international waterway, in cooperation with the Canadian St. Lawrence Seaway Management Corporation.

STRATEGIC GOALS

SAFETY: Promote navigation and workplace safety and environmental protection by reducing vessel incidents and employee injuries, and preventing environmental incidents.

Outcome Goals:

- Increase the application of technologies and programs to ensure navigation safety and protection of the river environment.
- Reduce the risk of commercial vessel incidents.
- Improve compliance with navigation and workplace safety and environmental standards.

How We Will Achieve This Strategic Goal:

- Insist on excellence in occupational safety by providing the education, equipment and commitment needed to make the Seaway an accident-free employer.
- Effectively utilize emerging technologies, such as Global Positioning Systems (GPS) and related systems, to enhance system efficiency and safety.
- Maintain the enhanced vessel inspection program at Montreal to inspect every ocean vessel on the first transit inbound each navigation season, in coordination with SLSDC's Canadian counterpart and the Canadian and U.S. Coast Guards. The program includes Seaway regulations and fittings, legislated port-state inspection, and the International Safety Management Code (ISM).
- Promote System safety through traffic control procedures; rules and regulations for Seaway transit; vessel speed surveillance; deployment of fixed and floating navigation aids; operation of weather and visibility meters; vessel inspections, routine and for cause; water level and rate of flow monitoring; and vessel customer exit survey recommendations.
- Maintain and improve our capability to react to a hazardous materials spill by conducting simulated Emergency Response Exercises, and updating our spill response plan and equipment accordingly. Continuously improve teamwork of regional government agencies to respond to an incident through training, simulations and actual incident critiques.

- Hire an Industrial Hygienist to review and analyze environmental and industrial hygiene issues at the SLSDC, and plan a program to ensure a clean and healthful environment for SLSDC employees and customers.

Candidate Performance Measures: CY data sourced from SLSDC offices of Lock Operations, Engineering and Strategic Planning, and Maintenance and Marine Services. Annual historical data for baseline measurement is included in annual performance agreements, performance plans, and budget justifications. Selected historical data is shown below.

✓ Increase utilization of available technologies to advance system safety.

✓ Reduce the number of commercial vessel incidents in excess of $50,000 in damages each navigation season. Five-year rolling average, vessel incidents:

CY 1989 — 1993	1.2
1990 — 1994	0.4
1991 — 1995	0.4
1992 — 1996	0.2
1993 — 1997	0.0
1994 — 1998	0.0
1995 — 1999	0.0

✓ Increase the percentage of ocean vessel first-transit-inbound inspections at Montreal, outside of U.S. waters, each navigation season:

CY 1996	38%
1997	100
1998	100
1999	100

✓ Increase Emergency Response Plan training and simulated activations.

RELIABILITY: Maintain user confidence in the continued viability of the Seaway System by ensuring that plans and decisions sustain the long-term reliability and availability of U. S. navigation facilities.

Outcome Goals:

- Increase the availability and reliability of navigation facilities each shipping season.
- Reduce the risk of vessel delays due to lock equipment failure.
- Improve maintenance and inspection systems to ensure an accessible, safe, and efficient System for users.

How We Will Achieve This Strategic Goal:

- Ensure the structural integrity and mechanical reliability of our locks through a comprehensive program of maintenance, inspection and modernization.
- Implement AIS/GPS technologies to more efficiently manage vessel traffic control and vessel transits at the U.S. Seaway locks.
- Strictly maintain weekly/monthly inspections for electrical systems and lock machinery and conduct major maintenance and rehabilitation programs during the winter shutdown period.
- Continuously evaluate and improve our operating procedures, regulations and policies to better serve our customers. Actively seek customer feedback.
- Supplement SLSDC preventive maintenance measures in coordination with periodic, comprehensive surveys and evaluations by independent engineering consultants such as the U.S. Army Corps of Engineers.
- Maintain five-year “rolling” capital improvement plan for machinery, lock and hydraulic steel structure replacement/ rehabilitation programs.
- Periodic channel maintenance and improvements, including sweeping and maintenance dredging.
- System operating date negotiations with Canadian counterparts; and related Safety goal activities critical to availability: maintenance and repair of fixed and floating navigation aids; weather and visibility meters; Emergency Response Plan and periodic simulations; water level and rate of flow monitoring.

Candidate Performance Measures: CY data sourced from SLSDC offices of Lock Operations, Engineering and Strategic Planning, and Maintenance and Marine Services. Annual historical data for baseline measurement is included in annual performance agreements, performance plans, and budget justifications. Selected historical data is shown below.

✓ Increase the percentage ratio of Seaway System navigation days open, versus downtime in the U.S. Sectors of the Seaway, for any incident, cause, problem, or occurrence, including weather. Five-year rolling average of navigation day availability:

CY 1987 — 1991	97.4%
1988 — 1992	97.0
1989 — 1993	96.4
1990 — 1994	96.2
1991 — 1995	96.4
1992 — 1996	96.4
1993 — 1997	96.6
1994 — 1998	97.5
1995 — 1999	98.1

✓ Reduce delays to navigation, per total commercial vessel transit, due to lock equipment maintenance failure. Five-year rolling average of per-transit delay hours:

CY 1987 — 1991	0.001361 hours
1988 — 1992	0.001963
1989 — 1993	0.002860
1990 — 1994	0.005628
1991 — 1995	0.006801
1992 — 1996	0.007134
1993 — 1997	0.006256
1994 — 1998	0.005155
1995 — 1999	0.002105

✓ Increase the effectiveness and extent of periodic evaluations and inspections, by SLSDC personnel. Obtain outside views and expertise, by arranging for periodic inspections by the U.S. Army Corps of Engineers or other consultants.

TRADE DEVELOPMENT: Encourage increased System utilization that benefits both the Great Lakes regional economy and the national economy, while promoting cost effective competition for all System users.

Outcome Goals:

- Increase the volume of United States international tonnage through the Seaway System, to and from U.S. ports.
- Increase ocean vessel fleet System utilization in terms of laden vessel transits and tonnage per transit.
- Increase domestic and international trade development programs to improve the Seaway's competitive position in serving the nation.

How We Will Achieve This Strategic Goal:

- Serve as a catalyst to unite the Great Lakes/Seaway community to improve communications and cooperation on system-wide initiatives directed toward improving customer service.
- Target overseas trade development programs to high potential markets and regions. Focus trade activities on specific commodity groups and vessel service, including refitting existing ships and construction of new vessels for Seaway operation.
- Advocate policies to reduce System operating costs to the industry, such as rebates, new business incentives, and targeted cargo discounts. Support negotiations with our Canadian counterparts to freeze, reduce or eliminate all Seaway tolls.
- Work with carriers, ports, pilots, agents, cargo handlers, and other interests in the Great Lakes/Seaway community to contain costs and participate in trade development programs.
- Develop operating initiatives to improve current capacity and future utilization of the system, such as vessel draft, beam and length modifications.
- Expand our capability to analyze and disseminate traffic information and publications and develop trade leads. Continue successful information outreach programs like Seaway Nightcast.

Candidate Performance Measures: CY data sourced from SLSDC monthly and annual navigation statistics, and Office of Lock Operations data on vessel pre clearance, and vessel owner/agent records. Annual historical data for baseline measurement is included in annual performance agreements, performance plans, and budget justifications. Selected historical data is shown below.

✓ Increase tonnage volume for total System tonnage, and United States international tonnage through the Seaway System, to and from U.S. ports. Five-year rolling average, international tonnage:

CY 1986 — 1990	10.2 million tons
1987 — 1991	9.5
1988 — 1992	9.1
1989 — 1993	8.8
1990 — 1994	8.8
1991 — 1995	9.5
1992 — 1996	10.4
1993 — 1997	10.6
1994 — 1998	11.2
1995 — 1999	11.1

MANAGEMENT ACCOUNTABILITY: Improve Seaway customer service, increase employee proficiency, and be accountable for sound financial management.

Outcome Goals:

- Increase customer/stakeholder satisfaction with SLSDC services.
- Increase workforce performance measurements to improve morale, and to achieve progress toward meeting all SLSDC performance goals.
- Increase management planning focus on meeting long-term critical capital outlay programs, operations and maintenance needs, and replenishment of emergency reserves.

How We Will Achieve This Strategic Goal:

- Conduct outreach with all customers, employees, industry, federal and state agencies to involve the customer in the development of policies, programs and operating decisions.
- The SLSDC will pursue ISO 9002 certification for all organizational functions.
- Supplement outreach activities with customer surveys to obtain direct feedback concerning operations and regulations in practice and recommendations for program modifications.
- Foster an employee “customer” environment to strengthen and develop the organization internally, reach out to the employee local community and participate in local/national education initiatives.
- Continue support for administration initiatives and worklife policies, empower employees in the decision process, utilize partnerships, encourage teambuilding and worklife policies.
- Establish binational partnerships with Canadian counterparts to drive service improvements and share resources.
- Conduct and participate in maritime industry oriented public meetings with a broad array of U.S., Canadian and overseas interests representing all segments of the Great Lakes St. Lawrence Seaway System.

- Ensure that commitments are maintained to monitor costs, to build emergency reserves, and to conduct periodic risk assessments. Corporation assets will be safeguarded and transactions performed in accordance with accepted accounting principles.

<u>Candidate Performance Measures</u>: CY and FY data sourced from SLSDC annual financial audits and management reports. Annual historical data for baseline measurement is included in annual performance agreements, performance plans, and budget justifications. Selected historical data is shown below.

✓ Improve the customer survey ratings of SLSDC performance and service quality, measured over time against baseline survey results. Baseline: CY 1995 customer service rating of 4.5 on a scale of 1 to 5.

✓ Employee cultural audits measured over time against baseline audits.

✓ Reduce the ratio of administrative overhead expenses versus operating expenses, excluding depreciation. Five-year rolling average, administrative expenses as a percent of operating expenses:

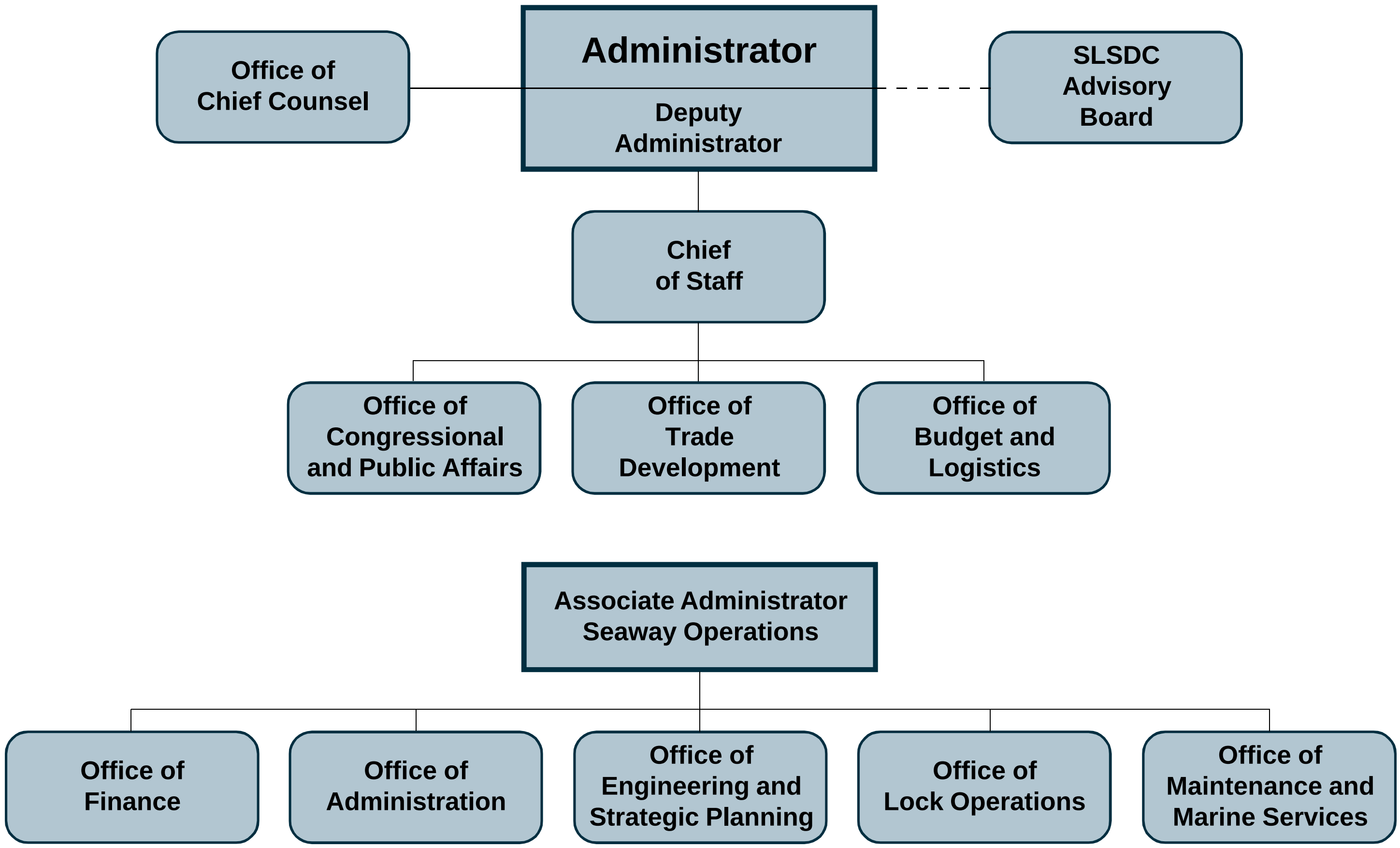
FY 1991 — 1995	25.6%
1992 — 1996	26.2
1993 — 1997	26.3
1994 — 1998	26.3
1995 — 1999	26.1

✓ Ensure that a “clean” annual financial audit rating is maintained. Baseline: under the auspices of the Government Corporation Control Act, the SLSDC has had a “clean” audit since the first FY audit of June 30, 1955.

- ✓ Increase the emergency reserve account year-end balances to achieve the SLSDC financial plan goal. Five-year rolling average reserve account balances:

FY 1988 — 1992	$11.4
1989 — 1993	11.7
1990 — 1994	11.8
1991 — 1995	12.0
1992 — 1996	11.9
1993 — 1997	11.4
1994 — 1998	11.0
1995 — 1999	10.7

Saint Lawrence Seaway Development Corporation
Organization Chart



SLSDC Points of Contact

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Finance	(315) 764-3275
Administration	(315) 764-3230
Engineering and Strategic Planning	(315) 764-3265
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BNUMBER: **B-278820**
DATE: February 10, 1998
TITLE: [Letter], **B-278820**, February 10, 1998
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B-278820

February 10, 1998

The Honorable Ted Stevens
United States Senate

Dear Senator Stevens:

This letter is in response to your request dated November 28, 1997, asking us to review the Federal Communications Commission's implementation of section 254(h) of the Communications Act of 1934, as amended. 47 U.S.C. sec. 254(h). Subsection 254(h) provides the authority for the Commission to authorize universal service support benefits for eligible schools and libraries and rural health care providers.

Your request concerns those provisions of the Commission's orders implementing subsection 254(h) that led to the incorporation in Delaware of two not-for-profit corporations. These corporations were formed to administer certain functions of the universal service programs for schools and libraries and rural health care providers. The Chairman of the Commission selects or approves the board of directors for these entities and the operating expenses of the corporations are recovered from industry fees assessed to support universal service. You asked whether the Commission has the legal authority to establish such corporations. In addition, you asked us to describe the federal laws (for example, the Federal Advisory Committee Act), employment rules, and congressional oversight that govern the operation of the corporations.

We sought the views of the Commission about these and other questions, and by letter of January 5, 1998, the Commission provided its legal opinion.

Question 1: Was the Commission authorized to establish the Schools and Libraries Corporation and the Rural Health Care Corporation?

Answer: As explained more fully below, the Commission exceeded its authority when it directed the National Exchange Carriers Association, Inc. (NECA) to create the Schools and Libraries Corporation and the Rural Health Care Corporation. The Government Corporation Control Act specifies that "[a]n agency may establish or acquire a corporation to act as an agency only by or under a law of the United States specifically authorizing the action." 31 U.S.C. sec. 9102. These entities act as the agents of the Commission and, therefore, could only be created pursuant to specific statutory authority. Because the Commission has not been provided such authority, creation of the two corporations violated the Government Corporation Control Act.

Because the Commission has argued that it did not "establish or acquire" the corporations, we provide some background about the establishment of the corporations. More detail is contained in the attached Appendix.

Establishment of the Corporations

Section 254, as added by the Telecommunications Act of 1996[1], among other things, made the Commission's universal service mandate more explicit and extended the reach of universal service support to schools, libraries, and rural health care providers. The section requires the Commission, acting on the recommendations of a Federal-State Joint Board, to define universal service and develop specific, predictable, and equitable support mechanisms. The provision expands both the base of companies that contribute to the universal service fund and the category of customers who benefit from the universal service support programs.

Section 254 is silent on how the Commission is to administer the universal service programs, including the programs for schools and libraries and rural health care providers. In the Universal Service Order released on May 8, 1997, the Commission, consistent with the Joint Board's recommendation, determined that it would create a Federal Advisory Committee to recommend a neutral, third-party permanent administrator of the universal service programs. In the interim, the Commission appointed the National Exchange Carrier Association, Inc. (NECA) the temporary administrator, subject to changes in NECA's governance.[2] NECA was established in 1983, at the direction of the Commission, as an association of local exchange carriers (LECs) to administer the interstate access tariff and revenue distribution process.[3] Prior to that time, AT&T had acted as a tariff filing agent for the entire industry and had also performed most of the administrative functions in connection with the settlements pooling arrangement.[4] Since NECA's creation, the Commission has assigned it the responsibilities for administering the existing universal service fund and other explicit support mechanisms.

On July 18, 1997, the Commission released NECA's Governance Order and directed NECA to create an independently functioning not-for-profit subsidiary to be designated the Universal Service Administrative Company (USAC) that would temporarily administer the universal service support program for high-cost areas and low-income consumers, as well as perform billing and collection functions for all of the universal service programs, including the programs for schools and libraries and the rural health care providers.[5]

The Commission also directed NECA to create two unaffiliated, not-for-profit corporations to be designated the Schools and Libraries Corporation and the Rural Health Care Corporation. The Commission concluded that such entities were critical to the successful implementation of the schools and libraries and rural health care programs. Moreover, to ensure continuity in and efficient administration of these programs, the Commission concluded that the corporations should continue to perform their designated functions even after the date on which the permanent administrator is appointed. Thus, the Commission removed these entities from the scope of the functions that will be performed by the temporary and permanent administrator.

NECA was directed to incorporate the corporations under the laws of Delaware and to take such steps as are necessary under Delaware and federal law to make the corporations independent of, and unaffiliated with, NECA and USAC. NECA was further required to submit to the Commission for approval the proposed articles of incorporation, bylaws, and any documents necessary to incorporate the independent corporations in order for the Commission to determine prior to their establishment that the requirements of the Order had been satisfied.

This Order and the subsequent incorporation documents provide that the corporations were organized by the Commission to carry out functions connected with the provision of universal service support to schools, libraries, and rural health care providers. These functions include the administration of the application process for schools and libraries and rural health care providers and the establishment of a website on which applications will be posted. See 47 C.F.R. sec. 69.618(a), 69.619(a).

The certificate of incorporation of the Rural Health Care Corporation specifies that the purpose of the corporation ". . . is defined in the Federal Communications Commission's . . . rules at 47 C.F.R. sec. 69.618, as it exists today and as it may be amended." The certificate of incorporation further states that the corporation may engage in other activities "so long as it is consistent with FCC Orders and Rules."[6] In its letter to our Office of January 5, the Commission stated that it did not envision these entities "operating outside the scope of the activities set forth in the Commission's orders." Commission letter at 9.

Under Commission rules the boards of directors of these entities are comprised of members either selected or approved by the Chairman of the Commission. The size and composition of the boards is set by the Commission, as is the term of office. The Commission Chairman must approve the removal of any director as well as a resolution to dissolve the Corporation. The Chief Executive Officer (CEO) of these corporations must be approved by the Chairman of the Commission. Authority to enter into contracts must be in compliance with Commission rules. All of these requirements have been included in the corporations' by-laws.

Authority to Establish the Corporations

It is the Commission's view that it has authority to establish the Schools and Libraries Corporation and the Rural Health Care Corporation under sections 4(i) and 254 of the Communications Act of 1934, as amended. Section 4(i) of the Act provides that:

> "The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions." 47 U.S.C. sec. 154(i).

Although we recognize the breadth of section 4(i),[7] the provision is constrained by the later passage of the Government Corporation Control Act. Under the Control Act:

> "[a]n agency may establish or acquire a corporation to act as an agency only by or under a law of the United States specifically authorizing the action." 31 U.S.C. sec. 9102.

Section 4(i) does not provide the specific statutory authority needed by the Commission to meet the requirements of the Control Act. Nor do we find that section 254 provides this authority.[8] Indeed, the Commission does not suggest that either of these provisions is broad enough to overcome the requirement of the Control Act. Rather, in a letter to our office dated January 5, 1998, the Commission contends that the Control Act is not implicated because the Commission did not "establish or acquire" the Schools and Libraries Corporation or the Rural Health Care Corporation in this case. According to the Commission, NECA established these corporations as a condition of becoming the temporary administrator.

We disagree. The Control Act requirement that a Federal agency possess specific authorization to "establish or acquire" a corporation to act as an agency could not be avoided by directing another organization to act as the incorporator. In our view, the Control

Act prohibits an agency from creating or causing creation of a corporation to carry out government programs without explicit statutory authorization.

Prior to enactment of the Government Corporation Control Act in 1945, there was no requirement for specific authority to create corporations. As the Supreme Court noted in Lebron v. National Railroad Passenger Corporation, "[**b**]y the end of World War II, Government-created and -controlled corporations had gotten out of hand, in both their number and their lack of accountability." Lebron v. National Railroad Passenger Corporation, 513 U.S. 374, 389 (1995).

Partly in response to this proliferation of corporations, a Joint Committee of Congress conducted a 2-year study and issued a "Report on Government Corporations" in 1944.[9] The report concluded that from simple beginnings the government corporation concept had evolved into a rationale for a maze of quasi-governmental corporations with little accountability. The inevitable results of this growth, noted the report, was the impairment of control by the Congress. Id. at 2. The report went on to find that the corporations had little congressional or executive branch supervision, few fiscal controls, and in many instances were in competition with the private sector. Specifically, the report stated: "There is no effective over-all control. Alone, or in certain groups, these corporations are autonomous."[10] The Committee called for over-all public control to be established.[11]

Legislative control of government corporations actually occurred in two stages during 1945. In February of that year, legislation required the General Accounting Office (GAO) to audit the financial transactions of all government corporations.[12] In December, the more comprehensive Government Corporation Control Act superseded these audit requirements.[13]

The Act was intended to make the corporations accountable to the Congress for their operations while allowing them the flexibility and autonomy needed for their commercial activities. Under the Act, the Bureau of the Budget (now Office of Management and Budget) controlled the corporations' budgets, Treasury controlled financial transactions, and GAO performed financial auditing.[14]

The Act also specified that without explicit congressional authorization, no corporation should be acquired or created by "any officer or agency of the Federal Government or by any Government corporation for the purpose of acting as an agency or instrumentality of the United States . . . ." sec. 304(a), 59 Stat. 602. In addition, the Act required that all corporations then operating under state charters were to be dissolved and reincorporated under federal law. The House Report accompanying the legislation stated:

> "The committee does not consider the practices of chartering wholly owned Government corporations without prior authorization by the Congress or under State charters to be desirable. It believes that all such corporations should be authorized and chartered under Federal statute. The bill provides that in the future all corporations which are to be established for the purpose of acting as agencies or instrumentalities of the United States must be established by act of Congress or pursuant to an act of Congress specifically authorizing such action." H.R. Rep. No. 79-856, at 11 (1945).

The Congress enacted legislation whose applicability was to be encompassing. The requirement for specific legislative foundation for corporations to act as agents of the United States was not to be thwarted by having another party act as the incorporator. In fact, the identity of the incorporator was not the determinant of the statue's applicability; the act expressly prohibits the "acquisition" of corporations to act as instrumentalities of the United States. As the Supreme Court noted in Lebron, the purpose for providing that government corporations could not be established (or acquired) without specific legislation ". . . was evidently intended to restrict the creation of all Government-controlled policy-implementing corporations, and not just some of them." Id. at 396. Thus, if an entity was to be established for the purpose of carrying out government functions under the control of an agency, legislation would be necessary. In other words, an agency on its own could not create or cause to be created a "captive corporation" to carry out government functions and designate such an entity as "private."

As discussed above and detailed in the attached Appendix, the Schools and Libraries Corporation and the Rural Health Care Corporation were clearly created to carry out governmental functions in connection with the Commission's responsibilities under section 254. We note that even the corporations, themselves, do not deny that they were established by the Commission. For example, the Rural Health Care Corporation, in its Request for Proposals for Program Administration Services defined itself as:

> ". . . a not-for-profit organization created by the Federal Communications Commission (FCC) to administer funds allocated to rural health care providers to aid in improving the telecommunication infrastructure at rates reasonable and acceptable to urban health care providers." (emphasis added).

NECA simply acted as the incorporator for the convenience of the Commission. There is no nexus between NECA's role as temporary administrator and the creation of these corporations. By the Commission's own rules, these entities were removed from the mandates of both the temporary and permanent administrator. Under the circumstances, we conclude that the Commission violated the Government Corporation Control Act by directing the establishment of the Schools and Libraries Corporation and the Rural Health Care Corporation to act as its agents in carrying out functions assigned by statute to the Commission.

Question 2: What federal laws (for example the Federal Advisory Committee Act), employment rules, and congressional oversight apply to the operation of the corporations?

Answer 2: The Commission's Order required that private corporations be established. As such, they are not subject to statutes that impose obligations on federal entities and federal employees in the areas of employment practices, procurement, lobbying and political activity, ethics, and disclosure of information to the public. On the other hand, each of the corporations is subject to federal statutes applicable to private corporations, unless outside the coverage of the statute. For example, we note that the Federal Advisory Committee Act (FACA) would not apply to these corporations since these entities are primarily operational in nature.[15]

Finally, as established by the Commission, Congress has no direct oversight over the corporations. The corporations do not provide budget information directly to Congress, but rather are accountable to the Commission, which in turn, is accountable to the Congress.[16]

We trust this is responsive to your inquiry.

Sincerely yours,

Robert P. Murphy
General Counsel

APPENDIX

Universal Service

Historically, universal service has meant access to basic telephone service, sometimes called "plain old telephone service" or "POTS." As evidence of the importance of providing universal service, the Commission points to section 1 of the Communications Act of 1934, which provides that the purpose of the Act is to:

> ". . . make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities and reasonable charges. . .." 47 U.S.C. sec. 151.

Universal service has been achieved through a combination of implicit and explicit subsidies at the federal and state levels. Implicit subsidies are provided through elevated interstate and intrastate access charges, elevated prices for business services, average rates over broad geographic areas, and elevated prices for advanced services, such as Caller ID and call forwarding.[1] In addition to implicit subsidies, the Commission and some states also provide explicit support mechanisms directed at increasing network subscribership by reducing rates in high-cost areas and at making basic telephone services available for low-cost consumers.[2] Section 254, as added by the Telecommunications Act of 1996[3], for the first time provided explicit statutory support for the Commission's responsibility to assure universal service. Universal service is defined as:

> ". . . an evolving level of telecommunications services that the Commission shall establish periodically . . . , taking into account advances in telecommunications and information technologies and services." 47 U.S.C. sec. 254(c)(1).

The Joint Board in recommending and the Commission in defining the services that are to be supported by universal support mechanisms are to consider the extent to which such telecommunications services (a) are essential to education, public health, or public safety; (**b**) have, through the operation of market choices, been subscribed to by a substantial majority of residential customers; (c) are being deployed in public telecommunications networks by telecommunications carriers; and (d) are consistent with the public interest, convenience, and necessity. 47 U.S.C. sec. 254(c)(1). Under the Universal Service Order, the Commission defined the "core" or "designated" services that will be supported by universal service support mechanisms as: single-party service; voice grade access to the public switched network; Dual Tone Multifrequency signaling or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation for qualifying low-income consumers.

In addition to the services included in the general definition, section 254 authorizes the Commission to designate additional services for schools, libraries, and health care providers for the purposes of subsection 254(h). Subsection 254(h) has two main parts. Subsection 254(h)(1) provides that any public or nonprofit health care provider that serves rural areas is entitled to receive upon a bona fide request "telecommunications services which are necessary for the provision of health care services" at rates comparable to those charged in urban areas of the same state. 47 U.S.C. sec. 254(h)(1)(A).

Schools and libraries, on the other hand, are entitled to receive upon a bona fide request services "at rates less than the amounts charged for similar services to other parties." 47 U.S.C. sec. 254(h)(1)(**B**).

Subsection 254(h)(2) directs the Commission to establish competitively neutral rules to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries. In addition, the rules are to define the circumstances under which a telecommunications carrier may be required to connect its network to qualified elementary and secondary schools, libraries, and health care providers. 47 U.S.C. sec. 254(h)(2).

The legislative history of the provision sheds some light on the intended scope of the programs. The Conference Report provides that:

> "For example, the Commission could determine that telecommunications and information services that constitute universal service for classrooms and libraries shall include dedicated data links and the ability to obtain access to educational materials, research information, statistics, information on Government services, reports developed by Federal, State, and local governments, and information services which can be carried over the Internet." S. Rep. No. 104-230, at 133 (1996); H.R. Rep. No. 104-458, at 133 (1996).

On May 8, 1997, the Commission released its Universal Service Order that, among other things, outlined a plan to implement subsection 254(h). With respect to schools and libraries, the plan provided discounts ranging from 20 to 90 percent on all commercially available telecommunications services, Internet access, and internal connections. The level of discounts would be based on a school's or library's level of economic disadvantage and its location in an urban or rural area. The Commission concluded that there should be established an annual cap of $2.25 billion on universal service expenditures for eligible schools and libraries.

With respect to public or nonprofit rural health care providers, the Commission's Order provided that these entities would be eligible to receive universal service support not to exceed an annual cap of $400 million. A health care provider may obtain telecommunications services at rates comparable to those paid for similar services in the nearest urban area with more than 50,000 residents, within the state in which the rural health provider is located. Rural health care providers will receive support for both distance-based charges and a toll-free connection to an Internet service provider. Each health care provider that lacks toll-free access to an Internet service provider may also receive the lesser of 30 hours of Internet access at local calling rates per month or $180 per month in toll charge credits for toll charges imposed for connecting to the Internet.

Administration

Section 254 is silent on how the Commission is to administer the universal service programs, including the programs noted above for schools and libraries and for rural health care providers. In its March 1996 Notice of Proposed Rulemaking and Order Establishing the Federal-State Joint Board on Universal Service, the Commission sought comment on the best approach to administer the universal service mechanisms fairly. The Commission noted that the fund could be administered by a non-governmental entity or the funds could be collected and disbursed through state public utility commissions.[4]

Consistent with the Joint Boards' recommendations that were released in November 1996,[5] and the record in the proceeding, the Commission decided to create a Federal Advisory Committee (Committee), pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, sec. sec. 4(a) and 3(2)(c), whose sole responsibility would be to recommend to the Commission through a competitive process a neutral, third-party administrator to administer the universal service program. The Commission also noted that because the needs of educational institutions are complex and substantially different from the needs of other entities eligible for universal support, it would require the administrator, after receiving recommendations submitted by the Department of Education, to select a subcontractor to manage exclusively the application process for eligible schools and libraries. Additionally, the Commission adopted the Joint Board's recommendation that the National Exchange Carrier Association, Inc. (NECA), be appointed the temporary administrator, subject to changes in NECA's governance that would make it more representative of the telecommunications industry as a whole.

NECA was established in 1983, at the direction of the Commission, as an association of local exchange carriers (LECs) to administer the interstate access tariff and revenue distribution process.[6] Prior to that time, AT&T had acted as a tariff filing agent for the entire industry and had also performed most of the administrative functions in connection with the settlements pooling arrangement.[7] Since NECA's creation, the Commission has assigned it the responsibilities for administering the existing high-cost and low income support mechanisms.

The Joint Board noted that NECA's current membership of incumbent local exchange carriers, its board of directors composed primarily of representatives of incumbent local exchange carriers, and its advocacy positions in several Commission proceedings may appear to non-LEC carriers as evidence of NECA's bias toward ILECs. Accordingly, the Board recommended that prior to appointing NECA the temporary administrator, the Commission should permit NECA to add significant, meaningful representation for non-incumbent LEC carrier interests to the NECA's Board of Directors. The Joint Board also recommended that NECA be eligible to compete in the process for selecting a permanent administrator if changes to NECA's membership and governance rendered NECA a neutral, third party.

The Commission conducted a separate proceeding to deal with the issue of NECA's governance. By a letter dated October 18, 1996, NECA requested that the Commission modify the size and composition of NECA's Board of Director by adding six directors from groups that would have a substantial stake in the new universal service programs.[8] On January 10, 1997, the Commission issued a Notice of Proposed Rulemaking and Notice of Inquiry addressing NECA's proposal and the Joint Board's recommendation that NECA be allowed to alter its governance structure. The NPRM tentatively concluded that in order for NECA to be eligible to serve as temporary administrator, NECA's Board must become more representative of the telecommunication industry as a whole.[9]

Also, on January 10, 1997, NECA requested that the Commission consider a revised proposal based on NECA's finding that it might not be possible to develop a satisfactory governance proposal within the context of a single administrative organization. Under NECA's January proposal, NECA recommended establishing a separate subsidiary to administer the universal support programs. As envisioned by NECA, this wholly owned subsidiary, designated as the Universal Service Administrative Company, would have a representative board of directors based on the Commission's recommendation and would include some representation from the current NECA Board.[10]

In June, subsequent to the Commission's Universal Service Order, NECA filed a discussion paper with the Commission that highlighted the advantages of single over multiple subsidiary approach. NECA proposed the creation of board committees that would have specific program responsibilities, including a committee for the high cost and low income program, a committee for the schools and libraries program, and a committee for the rural health care program. As proposed by NECA, these committees would have final decision-making authority with respect to defined aspects of program administration.[11]

On July 18, 1997, the Commission released its NECA's Governance Order that created a three-company structure for administration of new universal service programs. Under this Order, the Commission directed NECA to create an independently functioning not-for-profit subsidiary to be designated the Universal Service Administrative Company (USAC) that would temporarily administer the universal service support program for high-cost areas and low-income consumers, as well as perform billing and collection functions for all of the universal service programs, including the programs for schools and libraries and the rural health care providers.[12] The Commission also reconsidered, on its own motion, its decision in the Universal Service Order that a subcontractor manage the application process for schools and libraries.[13] Instead, the Commission directed NECA to create two unaffiliated, not-for-profit corporations to be designated the Schools and Libraries Corporation and Rural Health Care Corporation to administer portions of the schools and libraries and rural health care universal service programs (collectively referred to as the corporations).[14] The Commission also reconsidered the scope of functions that will be performed by the temporary administrator and the permanent administrator, by concluding that the corporations should continue to perform their designated functions even after the date on which the permanent administrator is appointed.[15]

The Commission argued that the creation of the two non-profit corporations was critical to the successful implementation of the schools and libraries and rural health care support mechanisms. This was because the programs were new and involved potentially large number of participants and beneficiaries and could require special expertise.

Establishment of the Corporations

Under the NECA Governance Order, the Commission outlined the functions of the corporations and designated the size and composition of their respective boards. The Commission directed that the Board of Directors of the Schools and Libraries Corporation will consist of seven members, including three schools representatives, one libraries representative, one service provider representative, one independent director, and the CEO of the corporation. Similarly, the Commission directed that the Board of Directors of the Rural Health Care Corporation will consist of five members, including two rural health care representatives, one service provider representative, one independent director, and a CEO.

The Chairman of the Commission selects or approves all of the members of the board of directors for the universal service corporations. The Chairman of the Commission will select the independent board member for the Schools and Libraries Corporation. In addition, under the Commission's Order, the three directors on the USAC Board of Directors representing schools and the one director representing libraries will be appointed to the Schools and Libraries Board of Directors. The USAC Board will also select the service provider from its board of directors to serve on the Schools and Libraries Board of Directors. The six board members of the Schools and Libraries Corporation will submit a CEO candidate to the Chairman for approval. The CEO will also sit on the board of directors.

A similar process was mandated for the selection of the board of directors of the Rural Health Care Corporation. The Chairman of the Commission will select, based on nominations, one of the two board member to represent rural health care providers. Additionally, the Chairman of the Commission will select an independent board member. The USAC Board of Directors is to select from its members the other director representing rural health care providers and a service provider. These four board member will submit a CEO candidate to the Chairman of the Commission for approval. The chosen CEO will serve on the board of directors.

Not only does the Commission direct the USAC Board to appoint certain of its board members to serve on the independent corporations' boards of directors but these USAC Board members are, in the first instance, also selected by the Chairman of the Commission. Under the NECA Governance Order, the Commission directed that USAC's Board will be comprised of: three directors representing ILECs; two directors representing long distance carriers (IXCs), one director representing commercial mobile radio service providers, which includes cellular, Personal Communications Services, paging, and Specialized Mobile Radio companies; one director representing Competitive Local Exchange Carriers; one director representing cable operators; one director representing information service providers; three directors representing eligible schools; one director representing eligible libraries; one director representing eligible rural health care providers; one director representing low-income consumers; one director representing state telecommunications regulators; and one director representing state consumer advocates.

Members of the industry or non-industry groups that will be represented on the USAC Board submit nominees selected by consensus to the Chairman of the Commission. The Chairman will review the nominations and select the members of the USAC Board. If a group fails to reach consensus and submits more than one nominee, the Chairman will select the individual to represent the group. Similarly, if no nomination is submitted, the Chairman will select the individual from the appropriate industry or non-industry group.

1. Pub. L. 104-104, 110 Stat. 56 (1996).

2. Federal-State Joint Board on Universal Service, First Report and Order, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1996) (Universal Service Order).

3. MTS and WATS Market Structure, Third Report and Order, CC Docket No. 78-72, Phase I, FCC 82-579 (rel. February 28, 1983).

4. With the imminent breakup of AT&T, the Commission believed that AT&T could no longer perform this function in the post-divestiture environment.

5. Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Joint Board on Universal Service, Report and Order and Second Order on Reconsideration, CC Docket No. 97-21 and No. 96-45, FCC 97-253 (rel. July 18, 1997)(NECA Governance Order).

6. A similar provision is contained in the Schools and Libraries Certificate of Incorporation. See 47 C.F.R. sec. 69.619(a).

7. Courts have characterized this section as analogous to Article 1, Section 8, Clause 18 of the Constitution, which authorizes Congress to make all laws that "shall be necessary and proper" for carrying out its enumerated powers and "all other powers" vested in the federal government. Mobile Communications Corp. of America v. FCC, 77 F.3d 1399, 1404 (D.C. Cir. 1996), cert. denied, 117 S. Ct. 81 (1996); New England Tel. & Tel. v. FCC, 826 F.2d 1101, 1107-08 (D.C. Cir. 1987); North American Telecommunications Ass'n v. FCC, 772 F.2d 1282, 1292 (7th Cir. 1985); see also United States v. Southwestern Cable Co., 392 U.S. 157, 181 (1968).

8. The Telecommunications Act of 1996 did provide the Commission with specific authority "to create or designate" one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. 47 U.S.C. sec. 251(e)(1). It also established a body corporate to be known as the Telecommunications Development Fund. This fund provides grants to small businesses to enhance competition in the telecommunications industry, among other things. The provision establishing the fund specifies the composition of the board of directors, as well as its meetings and functions. 47 U.S.C. sec. 614. However, with respect to the provision of universal service, Congress provided no authority to establish such entities.

9. U.S. Congress, Joint Committee on Reduction of Nonessential Federal Expenditures, Report on Government Corporations, Senate Doc. 227, 78th Cong., 2d Sess. (Washington: U.S. Govt. Print. Off., 1944).

10. Id. at p. 27.

11. For a complete history of the Control Act, see, Managing the Public's Business: Federal Government Corporations prepared for the Senate Committee on Governmental Affairs by the Congressional Research Service by Ronald C. Moe, S. Prt. 104-18 (April 1995).

12. Public Law 4, sec. 5, 59 Stat. 5 (1945).

13. In 1982, Pub.L. 97-258 codified the 1945 Act's provisions. See 31 U.S.C. sec. 9101-9110.

14. Primary auditing responsibilities were shifted in 1990 (Pub.L. 101-576) from GAO to the individual corporate Inspectors General appointed under the Inspector General Act of 1978.

15. The Federal Advisory Committee Act (FACA) was enacted to control the establishment of advisory committees to the federal government and to allow the public to monitor their existence, activities and costs. FACA's legislative history, relevant court cases, and General Services Administration regulations suggest that coverage is limited to those committees that provide advice and are not operational in nature. See, H.R. Rep. No. 92-1017, at 4 (1972); S. Rep. No. 92-1098, at 8 (1972); Judicial Watch, Inc. v. Clinton, 76 F.3d 1232 (D.C. Cir. 1996); and 41 C.F.R. sec. 101-6.10004(g).

16. A Memorandum of Understanding between the Department of Treasury, the Commission, and NECA, dated April 1997, provides the concepts and guidelines for reporting cash transactions and accrual-based balances of the Universal Service Fund to meet the fiscal needs of the U.S. Treasury. The Congressional Budget Office and the Office of Management and Budget have interpreted the language of the Telecommunications Act of 1996 to mean that payments into the Universal Service Fund should be counted as federal revenues and payments from the fund as federal outlays. This is because the

transfers of income between various classes of telephone users would not occur but for the exercise of the sovereign power of the federal government. Furthermore, portions of the Universal Service Fund, most notably its Lifeline and Linkup Programs, have already been included in the federal budget. "Federal Subsidies of Advanced Telecommunications for Schools, Libraries, and Health Care Providers" prepared by the Congressional Budget Office (January 1998).

1. FCC has defined "implicit subsidies" to mean that a single company is expected to obtain revenues from sources at levels above "costs" (i.e., above competitive prices levels), and to price other services allegedly below costs. Such intra-company subsidies are typically regulated by states. On the federal level, the primary implicit subsidies are the geographic averaging of interstate long distance rates and interstate access charges. In section 254(g) of the Communications Act, as added by the Telecommunications Act of 1996, 47 U.S.C. sec. 254(g), Congress expressly directed that the geographic averaging of interstate long distance rates continue. See Federal-State Joint Board on Universal Service, First Report and Order, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1996) (Universal Service Order).

2."Telephone Subscribership in the United States," a 1998 report by the FCC's Common Carrier Bureau that was based on Census Bureau figures for November 1997 found that almost 94% of households have telephone services. However, the rates vary based on income, age, household size, race, geographic location, and other factors. See also Common Carrier Bureau, FCC, Preparation for Addressing Universal Service Issues: A Review of Current Interstate Support Mechanisms (Feb. 23, 1996).

3. Pub. L. 104-104, 110 Stat. 56 (1996).

4. Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking and Order Establishing a Joint Board, CC Docket No. 96-45, FCC 96-93 (rel. Mar. 8, 1996) (Universal Service NPRM).

5. Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, FCC 96J-3 (rel. Nov. 8, 1996) (Recommended Decision).

6. MTS and WATS Market Structure, Third Report and Order, CC Docket No. 78-72, Phase I, FCC 82-579 (rel. February 28, 1983).

7. However, with the imminent breakup of AT&T, the Commission believed that AT&T could no longer perform this function in the post-divestiture environment.

8. Letter from Bruce Baldwin, NECA, to Reed Hundt, Chairman, FCC, October 18, 1996.

9. Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 97-21, FCC 97-2 (rel. Jan. 10, 1997), errata, mimeo 71784, CC Docket No. 97-21 (rel. Jan. 15, 1997) (NECA NPRM and NOI).

10. Letter from Bruce Baldwin, NECA, to Reed Hundt, Chairman, FCC, January 10, 1997.

11. Letter from Robert Haga to William F. Caton, Acting Secretary, FCC, June 23, 1997, recording an ex parte meeting between NECA personnel and Commissioner Quello and Commission staff.

12. The Commission agreed that expanding NECA's board would not assure neutrality. The Commission noted the concern expressed by commenters that NECA may be precluded from confining authority of newly added non-ILEC directors to matters relating solely to the administration of universal service support programs. Alternatively, if non-ILEC directors were allowed to participate in ILEC matters, there might be an issue of the duty owed by non-ILEC and non-carrier directors to NECA's membership on LEC issues unrelated to universal service.

13. The Commission stated that the creation of private corporations ". . . will provide for greater accountability and more efficient administration of the schools and libraries and rural health care programs than would the approach adopted earlier because a subcontractor, unlike the Corporations, would not be directly accountable to the Commission." (emphasis added).

14. The Commission stated that it was unpersuaded by NECA's argument that a single structure would be more efficient, avoid duplication of functions, or produce greater cost savings.

15. Changes to the Board of Directors of the National Exchange Carrier Association, Inc., and Federal-State Joint Board on Universal Service, Report and Order and Second Order on Reconsideration, CC Docket No. 97-21 and No. 96-45, FCC 97-253 (rel. July 18, 1997)(NECA Governance Order).

12 U.S.C. Sec. 635f. Termination date of Bank's functions; exceptions; liquidation

Export-Import Bank of the United States shall continue to exercise its functions in connection with and in furtherance of its objects and purposes until the close of business on September 30, 2001, but the provisions of this section shall not be construed as preventing the bank from acquiring obligations prior to such date which mature subsequent to such date or from assuming prior to such date liability as guarantor, endorser, or acceptor of obligations which mature subsequent to such date or from issuing, either prior or subsequent to such date, for purchase by the Secretary of the Treasury or any other purchasers, its notes, debentures, bonds, or other obligations which mature subsequent to such date or from continuing as a corporate agency of the United States and exercising any of its functions subsequent to such date for purposes of orderly liquidation, including the administration of its assets and the collection of any obligations held by the bank.

REAUTHORIZATION FACTS

Export-Import Bank Reauthorization Extended to September 30, 2001

The Export-Import Bank of the United States (Ex-Im Bank) is operating under a charter which is effective through September 30, 2001. Ex-Im Bank received overwhelming bi-partisan Congressional approval for its four-year reauthorization which will continue Ex-Im Bank's efforts to promote U.S. exports to emerging and developing markets.

Ex-Im Bank supports U.S. exports and American jobs as the nation's official export credit agency. It also levels the playing field for U.S. businesses seeking to enter challenging markets by providing financing for U.S. exports that is not available in the private market. It does not compete against private lenders.

Ex-Im Bank has been very successful with its small and medium-sized business outreach program. In the last three fiscal years, more than 80 percent of Ex-Im Bank's transactions have provided export financing for small and medium-sized businesses.

Since 1994, Ex-Im Bank has supported nearly 12,000 transactions with $68.5 billion in authorized financing that has benefited more than 2,000 communities nationally. Ex-Im Bank's financing annually sustains an estimated

200,000 jobs directly among exporters and suppliers, and another one million jobs indirectly among subsuppliers.

EX-IM HOME CONTENTS LINKS COMMENTS CONTACTS SEARCH

Export-Import Bank of the United States
Revised: November 6, 1998

Part 2

Government Sponsored Enterprise: Student Loan Marketing Association

A CBO STUDY

ASSESSING THE PUBLIC COSTS AND BENEFITS OF FANNIE MAE AND FREDDIE MAC

MAY 1996

The Congress of the United States
Congressional Budget Office

Summary

For nearly three decades, the federal government has relied on government-sponsored enterprises (GSEs) to improve access to mortgage credit for home buyers. The housing GSEs obtain funds from the bond markets and acquire mortgages from local lenders. By providing an intermarket conduit for funds, they ensure that home buyers can tap into the nation's savings pool for mortgage financing. The Federal National Mortgage Association (FNMA or Fannie Mae) and the Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mac) are generally regarded as having achieved that objective. The oversight responsibilities of the Congress, however, require periodic evaluations of all existing policies.

In the case of GSEs, frequent reassessment is especially warranted because their costs to the government are less obvious--though no less real--than the costs of alternative policies for achieving the same objectives. In addition, rapid technical advance in financial institutions and markets can quickly make policies obsolete. Finally, the sheer size of the housing GSEs--together they have a market value in excess of Citicorp and Wells Fargo combined--and their dominance of the secondary market for conforming mortgages require that the Congress examine the enterprises frequently.

GSEs are an unusual amalgam of two familiar institutions: federal agency and private corporation. As with other federal agencies--Fannie Mae was a part of the federal government for 30 years--federal rather than state law establishes the enterprises. In addition, they are afforded operating benefits not available to other for-profit enterprises, including exemptions from state and local income taxes and from the registration requirements of the Securities and Exchange Commission (SEC). However, like private corporations, they are owned by shareholders who are entitled to the after-tax earnings and increases in value of the firm. The executive officers are bound to manage the assets of the enterprise in trust for the benefit of owners, while meeting the responsibilities of the company to the government under its federal charter. The major defining characteristic of a GSE, however, is that the federal government is perceived to back the obligations of the sponsored enterprise with an implicit guarantee. That federal presence provides substantial benefits to Fannie Mae and Freddie Mac.

Establishing a Framework for Evaluation

Comparing costs and benefits is essential in evaluating the effectiveness of GSEs as an instrument of policy. A primary consideration, therefore, is to measure the costs of GSEs to society against the gains to intended beneficiaries. If the costs exceed the gains, then current policy is failing the public and alternative policies should be considered. Those alternatives include terminating or modifying the current relationship between the sponsored enterprises and the government. One form of termination is to privatize--or withdraw all benefits now afforded exclusively to those government-sponsored but privately owned companies. Short of terminating the current relationship, other modifications include a wide range of adjustments that have the potential to reduce costs or increase benefits.

In assessing costs and benefits, the government should use the perspective of intended beneficiaries and taxpayers, not that of shareholders and management. GSE status conveys a substantial value to the companies and their owners. In 1995, about 40 percent of the earnings of Fannie Mae and Freddie Mac could be traced to the benefits of sponsored status. An assessment by the GSEs themselves that they are highly cost-effective is not sufficient for the federal government, which must attend to broader interests in setting policy.

Government Costs

The GSEs claim that the cost of using sponsored enterprise status to improve access to mortgage finance is zero. By this Fannie Mae and Freddie Mac mean that, as of yet, there have been no federal appropriations for cash payments or guarantee subsidies. But in the place of federal funds the government provides considerable unpriced benefits to the enterprises. The subsidy to the GSEs is the free use of the government's power to raise money.

With the federal government's ability to tax and create money, its standing in the money and capital markets is paramount. The federal government can transfer its credit standing to others by explicitly guaranteeing their ability to pay. In return for contractual guarantees, the federal government usually collects fees.

In the case of the GSEs, no explicit guarantee is provided. In fact, the government requires the GSEs to disclose to potential investors that their securities are *not* backed by the full faith and credit of the U.S. government. But what the government appears to withhold with one requirement, it provides with a host of other legal provisions. For example, one such provision stipulates that GSE obligations are satisfactory collateral for ensuring the safety of the federal government's own funds when those are deposited in private institutions. The combined effect of those special provisions is to persuade the financial markets that GSE securities have "agency status" and are nearly as safe as if a federal government agency had issued them. On the strength of that implied guarantee, investors continued to lend money to Fannie Mae and Freddie Mac at relatively low interest rates even during the early 1980s, when Fannie Mae was economically insolvent.

Using GSE status to enhance the credit quality of the enterprises provides Fannie Mae and Freddie Mac with savings in funding costs worth billions of dollars each year. The benefit has "no cost" to the government or taxpayers only in the same restricted sense that the government would incur no out-of-pocket cash cost in providing free hydropower to an aluminum producer or giving federal lands to a developer, even though the recipients and their competitors would be willing to pay for those "gifts." In giving away the federal government's credit standing, which many private firms would pay to acquire, economic benefits are being transferred that are equivalent to those provided by writing Treasury checks.

Measuring the Cost of GSE Status

The challenge to a government that would make informed, disciplined use of sponsored enterprises is to measure the cost of what is given and compare it with value received. Several approaches to measuring that cost are possible. One is to price out the various ways that the government's relationship with the GSEs can lead to budgetary outlays. Those ways include the cash flows expected from a GSE insolvency, higher interest costs for the Treasury from the huge volume of agency securities, and losses from the GSEs' exemptions from SEC registration fees and state and local taxes. None of those individual items are easy to estimate, and more important, their sum may be less than the value the federal government confers by granting GSE status.

A second approach to measuring the value of GSE status is to calculate the difference between the market value of a GSE and its accounting value.

That approach also gets at the price that other firms would pay to be GSEs. One difficulty with that method, however, is that factors other than GSE status affect the difference.

A third approach is to restrict the benefits of enterprise status to a reduced cost of funding and determine the amount of money the federal government would have to give to the GSEs today to provide sufficient credit enhancement (that is, the equivalent of a stronger balance sheet) to justify the low borrowing rates they command. A complicating factor is that GSE status is not a simple one-time credit upgrade. Instead, a GSE has the government's implicit support whatever its intrinsic financial condition. Thus, a GSE has a permanent "option" to call on the government to enhance its credit further as its size and financial condition change. That option has considerable value to the enterprises, but assigning it a specific value is difficult.

Finally, one can estimate the annual cost to the government as the amount that the GSEs save in funding costs as a result of federal credit enhancement. The rationale behind that measure is that those savings represent the minimum value of GSE status to the enterprises, which they--and others--would willingly pay each year for this benefit.

Recent estimates of the funding benefit of GSE status to Fannie Mae and Freddie Mac indicate that the average savings are 0.25 percentage points to 2 or

Summary Table 1.
Estimated Gross and Retained Funding Subsidies for the Housing GSEs, 1995 (In billions of dollars)

	Fannie Mae	Freddie Mac	Total
Gross Subsidy			
Average debt outstanding	278.3	105.7	384.0
Subsidy (70 or 68 basis points)[a]	1.9	0.7	2.6
Average MBSs outstanding	494.7	450.5	945.2
Subsidy (40 basis points)	2.0	1.8	3.8
Total funding subsidy	3.9	2.6	6.5
Subsidy Pass-Through			
Mortgages financed	719.1	529.9	1,249.0
Pass-through (35 basis points)	2.5	1.9	4.4
Funding Subsidy Retained (Total subsidy minus pass-through)	1.4	0.7	2.1
Net Income Before Taxes and Gifts	3.4	1.6	4.9
Retained Subsidy (Percentage of net income before taxes and gift)	41.1	44.9	42.3

SOURCE: Congressional Budget Office.

NOTE: A basis point is one-hundredth of a percentage point. MBSs = mortgage-backed securities.

a. The savings for 1995 were 70 basis points for Fannie Mae and 68 basis points for Freddie Mac.

more percentage points a year for each dollar of funds acquired. The exact savings depend on the funding instrument (mortgage-backed securities, fixed-term debt, callable debt), the financial condition of the GSEs, and the state of the securities markets. Based on assumptions that seem reasonable for the past few years, the funding cost subsidy provided to the GSEs by the federal government appears to average about one-half of a percentage point for each dollar raised by the housing GSEs. As shown in Summary Table 1 on page xi, that subsidy was worth about $6.5 billion to Fannie Mae and Freddie Mac in 1995.

Based on estimates that the GSEs pass through to home buyers an average of a little over one-third of a percentage point in lower interest rates, Fannie Mae and Freddie Mac are not fully passing on the subsidy in lower mortgage rates. Rather, they are retaining about $2.1 billion while passing through $4.4 billion (see Summary Table 1). Both before and after federal income taxes, the retained federal subsidy accounts for more than 40 percent of the earnings of the housing GSEs.

Examining the Social Benefits of the Housing GSEs

The popular perception of Fannie Mae and Freddie Mac as benefactors of home buyers for whom they reduce interest rates and increase home ownership deserves examination. In fact, the housing GSEs are principally a vehicle for delivering a federal subsidy rather than the source of that subsidy. Moreover, the estimates presented suggest that they are not an efficient delivery vehicle because they retain nearly $1 for every $2 they pass through. Of course, the housing GSEs also may provide benefits other than passing through a subsidy. Those benefits include integrating mortgage and capital markets to assure home buyers access to funding, stabilizing mortgage markets, investing in technology to improve mortgage lending, and increasing home ownership by low-income households. However, given the availability of similar services from fully private, unsubsidized firms, and the credit risk for low-income families that federal agencies bear, it is difficult to assign a value to having the GSEs provide such benefits.

When the government initially turned to GSEs as a means for improving housing finance (Fannie Mae was converted to private ownership in 1968 and Freddie Mac was established in 1970), no fully private firms could create profitable, high-volume links between the bond and mortgage markets. Today, numerous private groups can perform that service.

Fully private firms routinely purchase mortgages and create mortgage-backed securities (MBSs)--claims to the cash from a pool of mortgages--that they can easily sell in financial markets. Driven by the search for profitable intermediation, those private firms concentrate their purchases in markets where funds are in shortest supply and create securities designed to minimize the cost of mortgage finance.

Such unsubsidized firms cannot compete directly with Fannie Mae and Freddie Mac because the federally enhanced low borrowing costs are available only to the GSEs. Accordingly, the private firms currently fund mortgages that FNMA or FHLMC are not eligible to purchase. If the government eliminated the subsidy to Fannie Mae and Freddie Mac, the mortgage markets would not retrogress to a pre-GSE condition. Rather, fully private intermediaries, probably including Fannie Mae and Freddie Mac, would provide the funding links between markets. Improving access to mortgage finance may have been a social benefit worth paying for in the past. It is now available without subsidy from fully private firms.

Private firms are also able to provide services to stabilize the mortgage market. That is, they are always willing to buy mortgages at prices that are consistent with their objective of building value for shareholders. To ask GSEs to do more is to expose them to the possibility that they might violate their fiduciary responsibilities to shareholders. Also, like the GSEs, fully private intermediaries have a financial interest in developing improved technology, especially for reducing costs and identifying good credit risks that traditional credit-screening methods would overlook. Unlike the GSEs, however, the private intermediaries do not benefit from a subsidized cost of funding. As fully private firms, they are subject to the discipline of paying the market cost of capital. Consequently, fully private firms are less likely than GSEs to undertake an investment whose expected rate of return is lower than the rate on other investments in the economy from which capital resources are diverted.

Providing access to mortgage finance for low-income families ultimately depends on a willingness to bear the credit risks of such borrowers. Based on the current distribution of credit risk, the depository institutions and federal guarantee agencies such as the Federal Housing Administration appear more willing to bear mortgage credit risk than the GSEs. Fannie Mae and Freddie Mac are specialists in mortgage funding. Although that expertise gives them an advantage over depositories in raising large sums of money, it does not give them an edge in identifying good credit risks among borrowers traditionally regarded as poor credit risks. Thus, the housing GSEs may not be especially well suited to the task of increasing home ownership for low-income families.

Concern about the apparent imbalance between the costs and benefits of the housing GSEs extends beyond the $2 billion a year that they retain. One further concern is that Fannie Mae and Freddie Mac rather than public officials substantially control the amount of the subsidy provided to the GSEs. Although the Office of Federal Housing Enterprise Oversight constrains the housing GSEs, Fannie Mae and Freddie Mac can increase the size of their benefit and the cost to the government. They can do so by increasing the volume of securities issued and by adjusting the composition of their business toward riskier, more heavily subsidized activities such as debt-financed portfolio lending rather than MBSs. Even if the increased subsidies from taxpayers were passed through entirely to home buyers, an on-call subsidy drawn at the direction of the recipient would be inconsistent with fiscal control. Moreover, additional government subsidies may not be passed through to home buyers owing to the market power of the housing GSEs, the close affinity of shareholder and management interests, and the inherent difficulties of monitoring the enterprises.

Options for Addressing the Balance of Costs and Benefits

Abrupt repeal of the GSEs' charters would probably create a counterproductive shock to the financial markets that could be avoided by a more gradual approach. A variety of options would stop well short of immediate privatization but could shift the balance of costs and benefits more favorably toward government. Those options include policy changes that would reduce public costs, redirect the benefit from the shareholders of Fannie Mae and Freddie Mac to intended beneficiaries, or increase competition.

The net effect of those and other policy changes on government costs and public benefits would depend on the responses of the housing GSEs, which are difficult to predict. For example, any policy that reduced the federal subsidy would lower the market value of the GSEs and might cause them to increase the risks they assume. Other possible responses include reducing the rate of the subsidy pass-through to home buyers, limiting public outreach efforts by the GSEs, or providing lower returns to shareholders. One of the disadvantages of using GSEs as an instrument of public policy is that extricating the federal government from its commitment to provide subsidies is a complex and uncertain undertaking.

Specific policies to reduce the public subsidy to Fannie Mae and Freddie Mac include imposing a cost-of-capital equalization fee on the debt--not the MBSs--of the housing GSEs and lowering the maximum-size mortgage that the enterprises are permitted to purchase. The first of those measures would recover some of the benefit that the government now provides to the GSEs, especially on the most heavily subsidized activities. The fee would also discourage portfolio lending, which is riskier than securitization and therefore more costly to the public.

The public subsidy could also be reduced by lowering the maximum-size mortgage that the housing

GSEs are permitted to purchase from the current level of $207,000. Such a reduction would limit the ability of management to expand the subsidy and would concentrate the pass-through of the subsidy on home buyers with smaller mortgages, who tend to have lower incomes. Over time, such an action would cut the size of the subsidy and of the GSEs. Reducing the size of the GSEs would address concerns that Fannie Mae and Freddie Mac are now so large that the government is incapable of withdrawing its implicit guarantee.

A more complex option would both redirect the current subsidy and increase competition in the secondary market. That policy would replace the implicit guarantee conferred exclusively on the enterprises with an explicit guarantee of all MBSs issued by qualifying non-GSEs as well as GSEs. The result would raise the number of issuers of MBSs guaranteed by taxpayers and would increase the need for federal authorities to administer safety and soundness regulations. One approach would be to permit a fully private entity to qualify for the federal guarantee of its MBSs if it agreed to comply with the regulations to which Fannie Mae and Freddie Mac are subject. To ensure fair and equitable competition between the existing GSEs and private firms, however, the explicit guarantee would replace all current GSE privileges in law, which would be repealed. The government would also specifically disavow guarantees of any debt securities issued by Fannie Mae and Freddie Mac in the future.

In essence, that option represents a form of privatization because the special sponsored relationship between the federal government and the housing enterprises would no longer exist. Because of increased competition, mortgage interest rates could fall by the amount of the currently retained subsidy on GSE-issued MBSs, or about 5 basis points (0.05 percentage points). Extending a federal guarantee to all issuers of MBSs, however, would continue to federalize that market.

If current estimates of the balance of costs and benefits for the government from the housing GSEs are considered too uncertain to support substantive policy changes, the government could take steps to reduce that uncertainty by requiring increased disclosures--subject to independent verification--from Fannie Mae and Freddie Mac of estimates of the value received and given because of GSE status. The government could also undertake competitive sales of its credit-enhancement services to obtain more objective and reliable estimates of value.

Conclusion

The federal government provides credit-enhancement subsidies to Fannie Mae and Freddie Mac now worth $6.5 billion a year. Those sponsored enterprises pass through about $4.4 billion of that benefit to home buyers. As a means of funneling federal subsidies to home buyers, therefore, the GSEs are a spongy conduit--soaking up nearly $1 for every $2 delivered.

When the housing GSEs were established, they were more than a vehicle to deliver subsidies. By integrating local mortgage markets with national capital markets, they improved the flow of funds to regions where money for home buyers was most scarce. In so doing, Fannie Mae and Freddie Mac added value.

The nation's financial structure now, though, is almost unrecognizable from the vantage point of the late 1960s. Changes in technology and regulation have enabled a significant number of fully private firms to provide those valuable market links on a profitable basis. The financial capabilities envisioned by those legislators who drafted the Fannie Mae and Freddie Mac charters are now in place and operational.

Since the housing GSEs have achieved their original objective, policymakers must weigh the desirability of continuing to provide the current subsidy against alternative policies. On the one side is the uncontrolled subsidy that goes annually to management and shareholders, not to mention the risk that the GSEs could increase their exercise of market power to push up mortgage rates. On the other side is the off-budget contribution of the housing GSEs to the nation's affordable housing goals, and in that respect the issue is cost-effectiveness. Is the retained subsidy worth the gain that Fannie Mae and Freddie Mac are adding to increased home ownership?

For a government-sponsored enterprise, privatization has a unique meaning. Because Fannie Mae and Freddie Mac are already shareholder-owned, the only transfer of equity that is required is to withdraw the taxpayers' contribution. To accomplish that withdrawal requires terminating the implicit guarantee of Fannie Mae and Freddie Mac securities. If the Congress determines that privatization is desirable, then a variety of policies gradual and abrupt--and none without some difficulties--are available to terminate the government's special relationship with the housing GSEs.

Chapter Four

The Congress and the GSEs: Weak Control and Incompatible Interests

Since subsidies to government-sponsored enterprises have no direct effect on federal outlays or the budget deficit, delegating authority for meeting some of the nation's housing goals to privately owned, federally sponsored corporations may have a budgetary advantage over direct federal action. A high price, however, must be paid for that benefit. The process of getting the subsidies for mortgage funding outside the budget has so strengthened the hand of private shareholders and weakened federal control that the management of the GSEs have both the motive and opportunity to subordinate the interests of taxpayers and the government to their own objectives and those of shareholders. Incompatible public and private interests may also explain differences in the approach of policy analysts and the GSEs to the issue of privatization.

Choosing a GSE or Non-GSE Structure

Sponsored enterprises are just one of many institutions available to the Congress for integrating mortgage and capital markets, delivering mortgage subsidies, and increasing home ownership. Federal and state agencies, a variety of nonprofit organizations, and for-profit intermediaries and contractors are all capable of carrying out one or more of those functions. The different effects on the federal budget and operating efficiency influence the choice of institutional structure. An expectation prevails that private, for-profit entities can achieve lower operating costs, respond to changes in market conditions and technology more rapidly, and acquire specialized resources more easily than their nonprofit and governmental counterparts.

The Difficulties in Controlling an Agency

No matter which institutional structure the Congress selects for carrying out an activity, experience shows that simply assigning a task is almost never sufficient to ensure that the entity carries out its assignment exactly as intended. In fact, two commonly encountered conditions can ensure that the designated agent will not conduct itself precisely in accord with the wishes of the Congress.

First, the management of the entity may have different goals or preferences than the Congress. In the case of an executive branch agency, differing political agendas may be responsible. Managers of GSEs, for their part, are likely to give greater weight to the interests of private shareholders than would the Congress. That difference in preferences is expected because the economic well-being of GSE management is more closely related to that of shareholders than to achieving public policy goals.

Opportunity is the second condition that can produce conduct by an agency that is different from what the Congress intended. That is, the agency can take some actions that are not apparent to the Congress. In fact, best efforts to the contrary, the management of every entity has numerous opportunities, undetectable by others, to "tilt" activity toward its preferred objectives.

The tools that the Congress uses to exercise control over its "agents" reflect an understanding of those conditions and a related proposition: the unintended use of delegated authority and responsibility tends to increase as the difference between Congressional and agency preferences grows, particularly given the limits on the ability of the Congress to monitor behavior. To reduce the opportunity for incompatible behavior, the Congress uses annual appropriation and oversight hearings, confirmation hearings, uniform salary and wage schedules, standard procurement procedures, simple but easily measured indicators of agency performance, and insistence on transparent operating technologies.

Congressional Control: Agencies Versus Government-Sponsored Enterprises

Although Congressional control of on-budget agencies is less than complete, it is significantly stronger than the influence that the Congress has over GSEs. The oversight and control of a GSE is weaker than for an agency because the monitoring costs are higher, the incentives facing the management of a GSE are more sharply at odds with the public policy goal of maximizing public benefits while minimizing public costs, and GSEs have discretionary resources available to influence policy decisions.

Monitoring Costs. The costs of understanding what an agent is doing increase with the number and complexity of its delegated responsibilities, and with restrictions on access to information about its performance. Both federal agencies and the GSEs are being asked to accomplish tasks that are growing in number and complexity. Having achieved their original purpose, the housing GSEs can now cite the authority to undertake a large number of tasks whose precise nature is not always clearly defined. Those tasks include providing ongoing assistance to low-income borrowers, promoting access to the market for rural and central-city homeowners, providing funds to "underserved" markets, responding "appropriately" to the private capital market, and providing leadership for the residential mortgage finance system. Those statutory roles are subject to such varieties of interpretation and reinterpretation that it is difficult to determine if and when they have been met.

The increased complexity of operations also appears to be more rapid at the GSEs than in federal agencies, where policy decisions rather than market changes are a more important factor. That added complexity reduces the ability of people outside the firm to understand its behavior. To cite one example, as the types of GSE securities proliferate to exploit fully the implicit federal guarantee and to accommodate new market niches, and as the hedges put in place to achieve the targeted level of risk become more complex, it becomes increasingly difficult for the Congress and its support agencies to estimate the amount of the subsidy that the GSEs are collecting. With every financing innovation, the GSEs gain an advantage over the government in having access to information.

When the Congress wants detailed information about the costs, operations, and plans of a federal agency, it obtains the information--often in public session--on the grounds that all such information is "public." For a privately owned GSE, however, such information is "proprietary" to the firm and is not made available to others. That characteristic of information about a GSE significantly increases the cost of monitoring its operations.

One kind of information that may be obtained for almost any on-budget federal agency is the amount of money it spends for various purposes. Not only are those amounts measured and accounted for, but they are subject to appropriation by the Congress. Federal agencies, therefore, tend to be on a fairly short financial tether. Perhaps more than any other single factor, the periodic need for appropriations forces the management of federal agencies to be mindful of the goals and objectives of the Congress.

The federal subsidy to the housing GSEs is open ended and, to a significant degree, under the influence of the GSEs' management. If the Office of Federal Housing Enterprise Oversight is unable to monitor and control risk taking by the GSEs, the federal government must fill any gap between shareholder equity and the amount of capital required to maintain a super Aaa standing in the financial markets. At no point in the budget process does the Congress vote on that transfer to the GSEs, nor is there any accounting for the use of those resources.

Incentives for Agents. In for-profit settings, the problem of controlling an agent's behavior can be addressed by tying the compensation of the agent to the financial gains of the principal. In government, opportunities for sharing gain are limited. Consequently, the government relies more on reducing the agent's latitude for pursuing his or her own interests. In the case of GSEs, both strategies are in evidence--one by shareholders, the other by government--but the balance of incentives appears to favor shareholders strongly at the expense of taxpayers and the public interest.

Private shareholders have succeeded in aligning management's interest with their own by relating management compensation directly to the returns that they realize. At both the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, a large share of each executive's total compensation depends on growth in annual earnings, earnings per share, and stock prices.[1] That form of compensation is explicitly intended to ensure compatibility between the interests of executive officers and those of shareholders. In addition, executive officers are provided with stock options and restricted stock. At the end of 1995, executive officers and directors of Fannie Mae and Freddie Mac owned more than 1.6 million shares and 695,000 shares in their companies, respectively. The five officers of each GSE whose positions were disclosed held options to purchase 825,000 (Fannie Mae) and 385,000 (Freddie Mac) additional shares of stock. On December 31, 1995, those options had an estimated exercise value of $44 million (Fannie Mae) and $15 million (Freddie Mac). The upside value of those compensation agreements is limited only by the increase in the price of GSE stock.

Little is remarkable about those compensation arrangements, particularly when seen in a corporate, for-profit context. They are recognizable as a conscious attempt to deal with the principal/agent problem, in which shareholders are viewed as the principals. However, in the context of a government-sponsored enterprise, in which management controls taxpayer subsidies to a significant extent, those compensation agreements can be inconsistent with the interests of taxpayers and the government.

The current structure of incentives facing the management of the housing GSEs is tantamount to that of a firm with two classes of equity holders, in which management controls the distribution of gains and losses between the two classes but is compensated with just one class of stock. No disinterested judge could avoid finding at least the appearance of a conflict of interest in that arrangement.

Examining the Role and Limitations of the Office of Federal Housing Enterprise Oversight

The Office of Federal Housing Enterprise Oversight, created by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, is intended to protect the interests of taxpayers from a loss brought on by the insolvency of a housing GSE. In pursuing that objective, OFHEO will develop and impose a risk-based capital requirement on the housing GSEs. Although the regulation has not been issued, OFHEO is apparently taking a highly technical, sophisticated approach to meeting its statutory mandate.

1. This and most of the information on compensation is from Fannie Mae, *Proxy Statement and Notice of Annual Meeting of Stockholders, May 16, 1996* (March 25, 1996); and Freddie Mac, *Proxy Statement and Notice of Annual Meeting of Stockholders, May 14, 1996* (April 12, 1996).

The 1992 statute specifies in some detail the stressful economic conditions that the housing GSEs must be able to survive under the standard for risk-based capital. Those conditions include large losses from mortgage defaults and a large increase or decrease in interest rates. In fact, the statute limits the discretion of OFHEO to specify a wider range of losses from defaults and limits the extent of interest rate scenarios tested.

Although OFHEO appears to be pursing its statutory mandate with diligence and professional competence, the interests of the Congress and taxpayers cannot be fully protected by it. First, OFHEO’s mandate is to avoid a failure by the housing GSEs that could impose losses on taxpayers. If it is successful, that step would be consistent with protecting taxpayer interests. But OFHEO is not charged with the task of eliminating the subsidy that Fannie Mae and Freddie Mac retain. Indeed, from the office’s perspective, continued receipt of that cushion of annual income could be regarded as a plus for safety and soundness. In addition, OFHEO's objective of minimizing risk is inconsistent with the current objective of using the GSEs to finance the achievement of social goals. Finally, even though OFHEO has the legal authority and the institutional capacity to closely monitor and evaluate the financial position of Fannie Mae and Freddie Mac, it cannot possibly have access to all of the information the agencies possess.

Taking into Account Subsidized Profits and Political Risks

The possibility of privatizing Fannie Mae and Freddie Mac clearly reveals the inconsistency of taxpayer and shareholder interests. For taxpayers and government policymakers, that issue involves weighing costs and benefits in search of efficient, equitable public policies. Changes in the federal relationship with the housing GSEs that would decrease government subsidies and increase public benefits are naturally seen as desirable.

For the shareholders and managers of Fannie Mae and Freddie Mac, however, the possibility of privatization raises the specter of losing more than 40 percent of the firms' net income. Terminating the federal subsidy and withdrawing the government's equity position could reduce the market value of the housing GSEs by an equivalent percentage. Clearly, the prospect of such a loss of personal fortune is one of the biggest risks facing investors and senior managers of those companies.

In keeping with its fiduciary responsibility to shareholders and its own financial interests, the management of the housing GSEs has devoted a significant (but undisclosed) portion of the enterprises' resources to countering--or hedging--that political risk. For example, the two housing GSEs have 12 employees who are registered lobbyists under the Lobbying Disclosure Act of 1995 and a number of political consultants under contract.

Fannie Mae, in particular, makes no secret of its attempts to influence federal policy toward the GSEs as a means of controlling political risk. Those efforts have led one observer to remark that "at Fannie Mae political and financial power are inextricable: bone and sinew, mortise and tenon."[2] Some of Fannie Mae's initiatives in the past several years seem aimed at ensuring the flow of federal benefits to the enterprises in perpetuity.

Consider, for example, Fannie Mae's decision to create 25 Partnership Offices in cities across the country to coordinate with state and local political authorities. Although those offices may conduct some mortgage-related business, their principal function is to enhance Fannie Mae's political base. In discussing that move, Fannie Mae's general counsel said: "For a relatively small investment, Fannie Mae will be recognized as a force for good in each of the cities or states. By doing so [Fannie Mae] will have 25 networks of support."[3] Also, in commenting on the GSEs' success in defeating a proposed cost-of-capital equalization fee proposed in 1995, Fannie

2. Michael Carroll, "Masters of Beltway Capitalism," *Institutional Investor* (July 1995), p. 61.

3. Ibid., pp. 64-65.

Mae's general counsel concluded, "the strength of our handling of this issue and others" comes from "building this network and working it over time so that when a franchise issue comes up, our ducks are lined up."[4] Significantly, too, Fannie Mae explicitly includes the contribution to preserving its "franchise" when evaluating the performance of executive staff.[5]

Those efforts to acquire "political risk insurance" have borne fruit. As Fannie Mae put it in its 1995 annual report: "Policy makers in Washington, DC and throughout the country understand very well that Fannie Mae is a critical part of the success of our nation's housing finance system. And this has made our franchise stronger than ever before."[6] One analyst has gone so far as to conclude that "Fannie Mae and Freddie Mac are so large and powerful today that the government probably lacks the ability to compel them to accept privatization if they believe that their interests would thereby be disadvantaged."[7]

The conduct of the GSEs in this respect is not scandalous or even anomalous. Rather it is entirely consistent with management's obligation to protect the interests of shareholders. The lawful, but unbridled, advance of shareholder interests at the expense of taxpayers, however, is an essential and inescapable consequence of the choice of GSEs as a means of delivering a federal subsidy to borrowers. It is part of the price of using GSEs as an instrument of public policy. Not least, it is a factor to be weighed in any decision to continue that practice or to end it by privatizing Fannie Mae and Freddie Mac.

4. Ibid., p. 65.

5. Fannie Mae, *Notice of Annual Meeting of Stockholders, May 18, 1995* (March 27, 1995), p. 11.

6. Fannie Mae, *1995 Annual Report* (April 1995), p. 4.

7. Thomas Stanton, "Government-Sponsored Enterprises and Changing Markets: The Need for an Exit Strategy," *The Financier*, vol. 2, no. 2 (May 1995), p. 32.

Chapter Five

Options for Improving the GSE Cost-Benefit Balance for Taxpayers

The Congress could adopt measures to increase public benefits, reduce costs, or improve the ability of the government to obtain timely, relevant, and reliable information about the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. Although many of those changes in current policy would stop short of privatization, they would withdraw some of the retained benefits of the status of a government-sponsored enterprise or provide firmer estimates of the potential gains or losses from privatization.

Increase Public Benefits

Increasing public benefits would redirect subsidies from Fannie Mae and Freddie Mac to public beneficiaries, including taxpayers. If the subsidy was to be redirected to home buyers, a policy of increasing competition in the secondary market for conforming mortgages would be required. If the subsidy was to be retargeted toward low-income and other high-risk borrowers, more intrusive regulation of GSE mortgage purchases and additional mandated activities could be necessary.

Increase the Subsidy Pass-Through to Home Buyers

The lack of competition in the market for securitizing conforming mortgages limits the share of the subsidy now passing through to home buyers. Fannie Mae and Freddie Mac are able to sustain a duopoly because GSE benefits are provided exclusively to them. One solution is for the government to withdraw its implicit guarantee of all GSE securities. Doing so, however, would cause mortgage interest rates to rise. Alternatively, the government could explicitly guarantee all mortgage-backed securities, whether issued by a GSE or a fully private company. To qualify, fully private conduits would have to agree to meet the safety and soundness requirements of the Office of Federal Housing Enterprise Oversight under the same terms as Fannie Mae and Freddie Mac. The government would not make any payments under that guarantee, except in the extreme circumstance--as is the case with the GSEs--of an issuer failing to make payments on MBSs.

Under this option, mortgage rates could fall by the portion of the subsidy on MBSs that the GSEs retain--that is, five basis points (0.05 percentage points). The government's liability, however, would increase in scope. Moreover, under current budget concepts, the expected cost of those guarantees would be recorded in the budget as outlays when the federally guaranteed MBSs were issued. Some of that increase in outlays, however, would simply recognize the costs of the GSEs that are now excluded from the budget.

Eliminate the Debt Subsidy

If explicit MBS guarantees were available, no justification would exist for the special privileges now granted to the GSEs, including the exemption from state and local income taxes and Securities and Exchange Commission registration fees. Those special provisions of the law could be repealed. When taking that action, the government could also disavow any responsibility for subsequent debt issues of the GSEs. If the government's disavowal of credit enhancement for future debt issues was credible, the market interest rate on new issues would rise to reflect the intrinsic quality of credit of the GSEs. The explicit guarantee on MBSs, along with withdrawing all special privileges for GSEs, should eliminate the subsidy on GSE debt. If, despite those measures, the market continued to regard the debt of GSEs as being enhanced in quality by the federal government, then the GSEs would emerge with most of their subsidy intact, unthreatened by the entry of private competitors that would not have the option to issue subsidized debt. In such circumstances, the GSEs might leave the MBS market entirely to private intermediaries and specialize in debt-financed portfolio lending, whose high profitability could survive this policy change.

An exclusive or dominant focus by Fannie Mae and Freddie Mac on higher-risk portfolio lending would increase the importance of effective safety and soundness measures. The scope of OFHEO's regulatory responsibilities would also increase under this policy as the number of firms within its jurisdiction rose. The exposure of taxpayers to risk could also widen if a larger share of home mortgages was securitized.

If those policies were successful in terminating the subsidy on GSE debt, substituting explicit for implicit guarantees, and forcing the complete pass-through of the MBS subsidy, then they would have achieved successful privatization by most standards. Competition would increase, mortgage interest rates would fall, and home ownership would rise. Eventually, the Congress could repeal the GSE charter acts and recharter the enterprises under state law as a formality. Breaking the GSEs' monopoly and replacing the exclusive implicit guarantee with an inclusive explicit one would strengthen Congressional control of the subsidy. For example, the government's guarantee might eventually be reduced from 100 percent of loss to 95 percent. Alternatively, the government could provide the current volume of federal guarantees of MBSs without charge and meet the growth in demand for guarantees by auctioning additional credit enhancement. Those policy changes could result in budget savings.

Target the Retained Subsidy

If Fannie Mae and Freddie Mac were to be permitted to continue receiving subsidies at current rates, policy could attempt to redirect a portion of the retained benefit to low-income and other high-risk home buyers. Raising the affordable-housing goals authorized in the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 would be a natural approach to that policy.

However, clarity of objectives is vital in evaluating this option. The goal is to increase loans to borrowers who would otherwise not get credit but who are good credit risks. The policy does not intend to force issuers to originate loans that cannot be repaid and result in foreclosure and sale of property. That outcome would leave the borrower worse off than if a loan had not been granted, impose needless costs on the GSEs, and increase taxpayers' risks.

Given the limited understanding of the factors that lead to mortgage default, the desired goal is unlikely to be achieved by simply using arbitrary numerical targets for the purchase of mortgages by borrowers with specific characteristics. Use of the automated underwriting systems developed by the housing GSEs is increasing and might be helpful, but its success is not yet confirmed. More important, if the automated systems do succeed in identifying good credit risks who would otherwise be rejected, Fannie Mae and Freddie Mac would find it profitable to purchase those mortgages without binding goals for affordable housing.

The GSEs are expert at funding and generating large profits. The last characteristic suggests that a more direct way to ensure affordable housing would be to require the GSEs to contribute cash to a fund that would directly assist low-income borrowers through mortgage interest rate buydowns and contributions to down payments. A precedent for such a requirement is the Federal Home Loan Bank System's Affordable Housing Program, which requires the banks to contribute 10 percent of their net income

Box 5.
Reducing Costs and Preserving Value

The housing enterprises have claimed that some of their funding cost savings is value added by the government in excess of the expected outlays from a GSE insolvency (see Box 4 on page 20). If that is true, then cutting public cost by reducing the enterprises' activities (or moving to full privatization) could reduce the government's value added and cause the loss of value to exceed the gains to taxpayers.

This potentially adverse effect, however, overlooks explicit guarantees as an alternative means of creating that value. Replacing free implicit guarantees with explicit ones and selling them at competitive fees would have several advantages over current policy. First, an explicit guarantee would provide an unconditional guarantee to investors. Second, the cost of the guarantee would be recognized and controlled in the budget. And third, receipts from guarantee fees would provide the government with resources to target subsidies toward special needs such as first-time or low-income home buyers or for any other public purpose.

from the previous year for acquiring and rehabilitating affordable rental housing.[1] That measure would more effectively target the retained subsidy toward the intended beneficiaries.

Reduce Public Costs

The strategy of reducing public costs includes making policy changes that would limit either the subsidy rate or the total amount of subsidy accruing to the housing GSEs or both. Four examples would be to raise the equity requirements for GSE shareholders, lower the ceiling on conforming mortgages, cap and reduce the size of the GSEs' mortgage portfolios, and impose a cost-of-capital equalization fee on GSE debt issues. In those cases, the social gains from reducing the scope of GSE activity could be affected by the extent to which the benefits of GSE status are "value added" by government (see Box 5).

Increase Shareholder Equity

For a given level of risk assumed by a GSE, the higher the shareholder equity is, the less the need for credit enhancement by taxpayers. Thus, a requirement that shareholders put more of their capital at risk could reduce the cost of GSE operations to taxpayers. That requirement would be an extension of the policy of imposing risk-based capital requirements on the GSEs.

One of the disadvantages of reducing the taxpayer subsidy is that the GSEs might lower the portion of the subsidy passed through to home buyers, particularly if they had no additional competition in the marketplace.[2]

Lower the Ceiling on Conforming Mortgages

Decreasing the ceiling on conforming mortgages would reverse the direction of annual change in that market. Instead of increasing, the maximum-size loan eligible for purchase by the housing GSEs would decrease each year starting from the current level of $207,000. This policy would reduce management's discretion to determine the GSEs' rate of growth and the call on taxpayer resources. In time, it would also produce smaller GSEs.

Under the policy of downsizing loans, the dividing line separating the conforming and jumbo markets would move steadily in the direction of mortgages within reach of low-income households. As the limit on conforming mortgages receded and on jumbo loans expanded, competitive fully private intermediaries would securitize a wider range of mort-

1. Congressional Budget Office, *The Federal Home Loan Banks in the Housing Finance System* (July 1993), pp. 21-24.

2. "GSE Chiefs Spurn Higher Capital Standards, Warning Costs Will Increase Mortgage Rates," *Inside Mortgage Securities* (April 19, 1996), pp. 9, 10.

gages. All mortgage markets would retain their access to the capital markets.

Interest rates at the conforming/jumbo boundary would rise. Those interest rate increases, however, would apply only to the largest mortgages, where a 25 to 35 basis-point rise in rates would have only a small effect on the decision to become a homeowner. In time, the declining ceiling on conforming mortgages would reach more interest-sensitive, low-income borrowers. When that occurred, the government could target cash subsidies toward those borrowers. Those subsidies could be financed from fees charged for explicit federal guarantees of privately issued MBSs.

A gradual downsizing of the GSEs would reduce the amount of shareholder capital required to protect taxpayer equity and would free equity capital in the housing GSEs. That effect would permit Fannie Mae and Freddie Mac to buy back existing equity shares without exposing taxpayers to increased risk. By refunding equity to stockholders, the housing GSEs would be providing capital to investors, which could be placed with the private intermediaries that would be expanding into the market formerly dominated by Fannie Mae and Freddie Mac.

Reducing the limit on conforming loans would also slim the housing GSEs to the size of fully private intermediaries. That reduction in the scale of Fannie Mae and Freddie Mac would address the general concern that privatization would not be effective in withdrawing the implicit federal guarantee because the housing enterprises would be too big for the government to permit them to fail.

Cap the GSEs' Mortgage Portfolios

The subsidy rate to the GSEs is substantially higher on debt issued to finance portfolio holdings of mortgages than on MBSs because the taxpayer capital required to back portfolio lending is higher. If the GSEs shifted their funding from debt to mortgage-backed securities, subsidies by taxpayers would be reduced without losing market integration or other benefits that the GSEs may provide to the public. This option places a dollar-volume cap on portfolio assets, although it could also be framed as a dollar cap on the volume of outstanding debt securities. In either case, the cap could be reduced gradually to the point at which the volume of risky assets held by the GSE was no more than 5 percent of the volume of MBSs outstanding. That policy would make the GSEs more like the jumbo conduits. Moreover, a portfolio of that size would be large enough to permit the GSEs to hold mortgages in inventory as a part of the process of securitizing mortgages. But it would not be large enough for the GSEs to take on substantial interest rate risk. A limit of 5 percent would be comparable with the size of Freddie Mac's owned portfolio when its operating focus was almost exclusively on MBS funding.

The housing GSEs argue that if their role in the secondary market was reduced, the volume of mortgages held by federally insured depositories or on-budget government agencies would increase. Thus, they argue, the taxpayer's exposure to risk would not be reduced by scaling back or privatizing Fannie Mae and Freddie Mac. The government would have an increased exposure to loss from the failure of insured banks and thrifts and from its on-budget direct loans and guarantees. But the distribution of mortgage risk among institutions after the market has been privatized is unknown. Capital requirements are significantly higher, however, for insured depository institutions than for the housing GSEs. Those requirements provide the federal government with some protection from depository risk. In addition, the government already recognizes and reserves funds for losses in its on-budget programs. Finally, the claim that deposit-insurance and federal-guarantee policy needs to be improved is a call for their reform; it is not an argument against reforming GSE policy.

Impose a Cost-of-Capital Equalization Fee on Debt

A capital-cost equalization fee might be levied on the average volume of debt that each GSE had outstanding each year. Such a fee would recover some of the benefit on the most deeply subsidized activity of the GSEs. It would target benefits as well as encourage the GSEs to focus more on their MBS line of business. A fee of 20 basis points would yield more than

$800 million per year based on the currently outstanding debt of the GSEs. At the direction of the Congress, some or all of those collections could be earmarked for targeted subsidies to low-income home buyers or for other purposes. Exempting MBSs from the fee would provide an incentive for the housing GSEs to shift funding toward less deeply subsidized forms of financing but avoid the need to raise mortgage interest rates.

Improve the Ability of Government to Monitor the GSEs

The aim of improving the government's ability to monitor the GSEs is to reduce their ability to control the size of their federal benefit and to narrow the range of disputed subsidy estimates. That approach includes increasing required disclosures by the GSEs and conducting several market transactions to obtain more objective information about the GSEs and the subsidies they receive.

Increased Disclosures

Under this option, the GSEs would be required to report such information as:

- The estimated subsidy received by the firm from its status as a GSE on callable and noncallable debt securities and MBSs;
- Exposure to interest rate risk;
- The estimated subsidy passed through to home buyers;
- Amounts invested in developing new technologies, including automated underwriting systems;
- Losses incurred or profits realized in stabilizing markets and targeting low-income housing; and
- All costs incurred by the firm in attempting to influence government policy through lobbying, political and economic "education," grants and contributions, or other means.

The above information could be subject to audits and detailed review by the Office of Federal Housing and Enterprise Oversight.

Market Tests

This option would narrow the estimates of the GSE subsidy and subsidy pass-through rates by revealing them in market prices. It includes requirements for:

- Fannie Mae and Freddie Mac to issue a substantial volume of MBSs without guarantees. Private credit enhancements could be used to back those securities, but the securities would not be guaranteed by the GSEs.
- The federal government to auction the right to issue limited volumes of federally guaranteed MBSs and callable and noncallable debt. Sales would be restricted to qualifying intermediaries that agreed to comply with OFHEO's risk-based capital requirements.

Privatize

Inasmuch as the GSEs are already privately owned, it seems odd to speak of privatization as a policy option. "Restructuring" is the preferred term used by one study.[3] Withdrawing federal sponsorship, or defederalization, is close to the essence of this option. However achieved, this policy would effectively eliminate the implied federal guarantee of GSE debt and MBSs.

Privatization could be undertaken abruptly by repealing the federal GSE charters and all the special provisions of law and regulation that convey the implicit guarantee. A sudden withdrawal of sponsored status--though it would make the decision more diffi-

3. Thomas H. Stanton, "Restructuring Fannie Mae and Freddie Mac: Framework and Policy Options," *HUD Studies* (May 1996), pp. 1-47.

cult to reverse--runs the risk of creating enterprises "too big to fail" and of subjecting the financial system to a shock from changes in the prices of many securities. A more gradual approach could address those difficulties.[4]

One of the thorniest issues facing privatization is the need to win the support of shareholders and management. The magnitude of the subsidy going to those interests makes it unlikely that stakeholders could avoid a loss if federal sponsorship was withdrawn. Accordingly, strong resistance to privatization is expected from the GSEs.

Based on recent experience with another GSE, the Student Loan Marketing Association, policies that reduce the federal subsidy can overcome such resistance.[5] Policies that would produce that result include reducing the size of the loan ceiling for conforming mortgages, imposing a cost-of-capital fee, limiting the ability of the GSEs to issue debt to finance their mortgage portfolios, mandating contributions to a low-income housing assistance fund, and imposing higher capital requirements for shareholders. Those policies could help the owners and managers of Fannie Mae and Freddie Mac to anticipate a net benefit from privatization.

Of course, such options beg a question: why would the GSEs agree to those policies as a first step toward the withdrawal of their subsidy? That admission simply acknowledges that once one agrees to share a canoe with a bear, it is hard to get him out without obtaining his agreement or getting wet. If the GSEs were to support privatization, they and the Congress could certainly carry it out without financial disruption.

Fairness for the Housing GSEs

Although unilateral action by the government is envisioned under all of the options, most of the proposals require tacit approval by the government-sponsored enterprises. Fannie Mae and Freddie Mac's agreement is necessary because they always have the option of seeking fully private status. Indeed, if any policy imposed more costs on the GSEs than it provided in government benefits, the GSEs' responsibility to their shareholders would require them to pursue privatization rather than oppose it. Retaining the exit option ensures that management and shareholders can avoid costs that exceed benefits.

Remaining Questions

The Housing and Community Development Act of 1992, which mandated this study, directed that it examine the effects of privatization on six areas:

- Costs to the enterprises,
- Costs of capital,
- Home ownership,
- Secondary market competition,
- Capital requirements for the GSEs, and
- Secondary market liquidity.

Although this report has supplied answers to most questions at various points, offering explicit responses provides a convenient summary of the Congressional Budget Office's principal findings.

Enterprise Operating Costs

The effect of privatization is difficult to predict. Repealing the exemption from state and local income taxes and SEC registration fees would raise GSE costs by perhaps $300 million per year. Yet the GSEs could presumably reduce spending for many purposes, especially lobbying and political risk-hedging. At the same time, competition on a level playing field with the private intermediaries should shed light on current expenditures that are not cost-effective. The net effect on operating costs of the GSEs could be either positive or negative.

4. Ibid.

5. Thomas H. Stanton, "Supplementary Analysis," *HUD Studies* (May 1996), pp. 78-79.

Funding Costs

The effect of privatization on this area is unambiguous: capital costs of the housing GSEs would increase by at least 50 basis points on average--or by the amount of the federal funding subsidy.

Home Ownership

The effect on home ownership is ambiguous and depends on other policies adopted by the Congress. If, for example, the Congress decided to continue the subsidy to home buyers through other means, home ownership would most likely not be affected. Moreover, if some of the subsidy retained by the housing GSEs was effectively targeted toward low-income home buyers, home ownership among that group could rise.

Secondary Market Competition

All indications are that, after a period of adjustment, competition in the secondary market would increase in both the conforming mortgage and jumbo loan sectors.

Capital Requirements for the GSEs

On a per-dollar basis of assets and risk assumed, capital requirements would rise. GSE status implies an infusion of taxpayer equity that privatization would withdraw. However, the former GSEs would be significantly smaller after the adjustment to privatization was complete. Thus, their total dollar requirement for capital could be lower than under current policy.

Secondary Market Liquidity

The liquidity of a market refers to the ability to buy or sell large quantities of securities without affecting price. Privatization should not significantly affect the overall size of the secondary market. Big volumes tend to promote liquidity. Yet the number of issuers of MBSs would increase. That proliferation of issuers could increase the cost of evaluating many separate security issues for investors. As a limit, the liquidity of the secondary mortgage market should be no less than the liquidity of the corporate bond market, in which large numbers of diverse debt securities are bought and sold daily.

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ANALYTICAL PERSPECTIVES

Budget of the
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policies that the FHLBanks must follow to evaluate and manage their credit and interest-rate risk. FHLBanks must file periodic compliance reports, and the Finance Board conducts an annual on-site examination of each FHLBank. Each FHLBank's board of directors must establish risk-management policies that comport with Finance Board guidelines.

The FHLBanks held $14.7 billion in mortgage loans at September 30, 2000, approximately 2.3 percent of total assets. The mortgage purchase programs offer members alternative ways of granting credit. In one of these programs, the FHLBanks finance mortgage loans and assume the interest-rate and prepayment risks, while the members originate and service the loans and assume most of the credit risk. All assets held by an FHLBank under these mortgage purchase programs are required, pursuant to the terms of the program, to be credit enhanced to at least the level of an investment-grade security. In addition, an FHLBank must hold risk-based capital against mortgage assets that have credit risk equivalent to an instrument rated lower than double A.

The FHLBanks' investment activities also pose important public policy issues about the degree to which their asset composition adequately reflects the mission of the System. Advances and mortgage loans were equivalent to about 77 percent of the System's outstanding debt, unchanged from one year earlier. As of September 30, 2000, about 52 percent of advances had a remaining maturity of greater than one year—down from 56 percent one year earlier. Although System investments other than advances rose to $178 billion as of September 30, 2000, compared with $156 billion one year earlier, as a percentage of total assets, they fell to 28 percent on September 30, 2000, from 29 percent one year earlier. Like other GSEs, the System issues debt securities at close to U.S. Treasury rates and invests the proceeds in higher-yielding securities. In 2000, the FHLBS issued $3.9 trillion in debt securities. However, the majority of the debt issued by the System is overnight or short-term, and total debt outstanding was about $577 billion at the end of 2000.

An enormous, liquid, and efficient capital market exists for conventional home mortgages today. As a result of Government Sponsored Enterprises (GSEs), Ginnie Mae, and the increasing presence of private securitizers, lenders have access to substantial liquidity sources, in addition to FHLBS advances, for financing home mortgages. The Financial Services Modernization Act further increases access to the FHLBS for community financial institutions with $517 million or less in assets by permitting advance borrowings that provide funds for small businesses, small farms, and small agribusinesses.

Education Credit Programs and GSEs

The Federal Government guarantees loans through intermediary agencies and makes direct loans to students to encourage post-secondary education. The Student Loan Marketing Association (Sallie Mae), a GSE, securitizes guaranteed student loans.

Student Loans

The Department of Education helps to finance student loans through two major programs: the Federal Family Education Loan (FFEL) program and the William D. Ford Federal Direct Student Loan (Direct Loan) program. Eligible institutions of higher education may participate in either or both programs. Loans are available to students and their parents regardless of income. Borrowers with low family incomes are eligible for higher interest subsidies. For need-based Stafford Loans, the Federal Government subsidizes interest costs while borrowers are in school, during a six-month grace period, and during certain deferment periods.

In 2002, more than 6 million borrowers will receive nearly 10 million loans totaling almost $48 billion. Of this amount, $37 billion is for new loans, and the remainder is to consolidate existing loans. Loan levels have risen dramatically over the past 10 years as a result of rising educational costs, higher loan limits, and more eligible borrowers.

The Federal Family Education Loan program provides loans through an administrative structure involving over 4,100 lenders, 36 State and private guaranty agencies, 50 participants in the secondary market, and over 4,000 participating schools. Under FFEL, banks and other eligible lenders loan private capital to students and parents, guaranty agencies insure the loans, and the Federal Government reinsures the loans against borrower default. In 2002, FFEL lenders will disburse more than 6 million loans exceeding $31 billion in principal. Lenders bear two percent of the default risk, and the Federal Government is responsible for the remainder. The Department also makes administrative payments to guaranty agencies and pays interest subsidies to lenders.

The William D. Ford Direct Student Loan program, originally included in the 1992 Budget as a demonstration project, was authorized by the Student Loan Reform Act of 1993. Under Direct Loans, the Federal Government provides loan capital directly to over 1,200 schools, which then disburse loan funds to students. In 2002, the Direct Loan program will generate more than 3 million loans with a total value in excess of $17 billion. The program offers a variety of flexible repayment plans including income-contingent repayment, under which annual repayment amounts vary based on the income of the borrower and payments can be made over 25 years.

While projected loan volumes continue to increase under both the FFEL and FDSL programs, lifetime subsidy costs are projected to decrease in both programs. For 2002, the weighted average subsidy rate for FFEL program is estimated at 12.18 percent and the rate for FDSL is estimated at –8.73 percent. These subsidy rates are lower than previous projections as a result of changes in interest rates, as well as decreased lifetime default rates and improved collections on defaults. The difference in subsidy rates is primarily a result of net interest income on FDSL; the interest income exceeds the Government's cost of funds under current economic assumptions. FFEL does not provide the Government with interest income because it is a guaranteed loan program.

Consolidation Loans, which allow borrowers to combine one or more FFEL, Direct Loan, or other Federal student loan into a single loan with a fixed interest rate, have grown dramatically in recent years. In 1995, Consolidation Loans totaled $3.6 billion, accounting for roughly 13 percent of overall student loan volume. In 2000, the program had grown to over $11 billion, making up a quarter of all student loan volume. This trend, which reflects an over 200 percent increase from 1995 to 2000, is expected to peak in 2001, when projected Consolidation Loans will total more than $14 billion, or nearly 30 percent of overall loan volume. With temporary Direct Loan interest rate discounts ending on September 30, 2001, consolidation volume is projected to drop back to $11 billion in 2002, after which it is expected to grow at approximately 4 percent annually.

As one of Education's performance management objectives, modernizing student aid benefit delivery is a key priority. Accordingly, in 1998 Congress created Student Financial Assistance (SFA) as the Government's first Federal performance-based organization. SFA is working to improve the management of all student aid programs, using its expanded procurement and contracting flexibility, with a focus on re-engineering information systems and expanding electronic data exchange to improve customer service, enhance data quality, and lower costs. SFA is working with students, lenders, guaranty agencies, and others to implement a strategic performance plan to address customer needs, enabling more students to gain information on Federal aid on the Internet, apply for it electronically, and have their eligibility determined quickly.

For Fiscal Year 2002, the Administration is proposing to address the shortage of qualified, skilled math and science teachers in elementary and secondary schools by increasing the amount of forgivable guaranteed and direct student loans from $5,000 to $17,500 for teachers who majored or minored in science, math, technology, or engineering and who commit to teach for five years in high-need schools. This proposal builds upon the teacher loan forgiveness program authorized in the 1998 Higher Education Amendments. High-need schools would include those with a high concentration of low-income students and those in which there is a large proportion of out-of-field math and science teachers.

Sallie Mae

The Student Loan Marketing Association (Sallie Mae) was charted by Congress in 1972 as a for-profit, shareholder-owned, Government-sponsored enterprise (GSE). Sallie Mae was privatized in 1997 pursuant to the authority granted by the Student Loan Marketing Association Reorganization Act of 1996. The GSE is a wholly owned subsidiary of USA Education, Inc. and must wind down and be liquidated by September 30, 2008. The Omnibus Consolidated and Emergency Supplemental Appropriations for 1999 allows the USA Education, Inc. to affiliate with a financial institution upon the approval of the Secretary of the Treasury. Any affiliation will require the holding company to dissolve the GSE within two years of the affiliation date (unless such period is extended by the Department of the Treasury).

Sallie Mae makes funds available for student loans by providing liquidity to lenders participating in the FFEL program. Sallie Mae purchases guaranteed student loans from eligible lenders and makes warehousing advances (secured loans to lenders). Generally, under the privatization legislation, the GSE cannot engage in any new business activities or acquire any additional program assets other than purchasing student loans. The GSE can continue to make warehousing advances under contractual commitments existing on August 7, 1997. Sallie Mae currently holds nearly 40 percent of all outstanding guaranteed student loans.

Business and Rural Development Credit Programs and GSEs

The Federal Government guarantees small business loans to promote entrepreneurship. The Government also offers direct loans and loan guarantees to farmers who may have difficulty obtaining credit elsewhere and to rural communities that need to develop and maintain infrastructure. Two GSEs, the Farm Credit System (FCS) and the Federal Agricultural Mortgage Corporation (Farmer Mac), increase liquidity in the agricultural lending market.

Small Business Administration

The Small Business Administration (SBA), created in 1953, provides financial assistance to the small business sector. Traditionally, small firms have faced difficulty obtaining long-term loans in the private marketplace because they tend to have limited credit history and cash flows. SBA's role as a "gap" lender is to correct these market imperfections and provide credit access during economic downturns.

The Administration's 2002 Budget anticipates that the SBA will make available in excess of $17.5 billion through its lending programs. The 7(a) General Business Loan program, SBA's primary lending vehicle, will support approximately $10.7 billion in loans. SBA will supplement the capital of Small Business Investment Companies (SBICs), which provide equity capital and long-term loans to small businesses, with $3.1 billion in participating securities and guaranteed debentures.

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SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10-K

(Mark One)

|X| Annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the fiscal year ended December 31, 1997 or

|_| Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the transition period from _________________ to __________________

Commission file numbers 001-13251

SLM HOLDING CORPORATION

(Exact Name of Registrant as Specified in Its Charter)

Delaware	52-2013874
(State of Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)
11600 Sallie Mae Drive, Reston, Virginia	20193
(Address of Principal Executive Offices)	(Zip Code)

(703) 810 3000

(Registrant's Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Act: Common Stock, par value $.20 per share Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes X No ___

The aggregate market value of voting stock held by non-affiliates of the registrant as of February 28, 1998 was approximately $7,052,332,153 (based on closing sale price of $41 5/16 per share as reported for the New York Stock Exchange -- Composite Transactions). On that date there were 171,264,359 shares of Common Stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's 1997 Annual Report to Shareholders are incorporated by reference into Part II of this Report and portions of the Proxy Statement relating to the registrant's Annual Meeting of Shareholders scheduled to be held May 21, 1998 are incorporated by reference into Part III of this Report.

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. / /

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This Report contains forward-looking statements and information that are based on management's current expectations as of the date of this document. When used herein, the words "anticipate," "believe," "estimate" and "expect" and similar expressions, as they relate to the Registrant's management, are intended to identify forward-looking statements. Such forward-looking statements are subject to risks, uncertainties, assumptions and other factors that may cause the actual results to be materially different from those reflected in such forward-looking statements. Such factors include, among others, changes in the terms of student loans and the educational credit marketplace arising from the implementation of applicable laws and regulations and from changes in such laws and regulations, changes in the demand for educational financing or in financing preferences of educational institutions, students and their families and changes in the general interest rate environment and in the securitization markets for student loans.

PART I.

Item 1. Business

Industry data on the Federal Family Education Loan Program (the "FFELP") and the Federal Direct Student Loan Program (the "FDSLP") contained in this report are based on sources that the Company believes to be reliable and to represent the best available information for these purposes, including published and unpublished U.S. Department of Education ("DOE") data and industry publications.

GENERAL

SLM Holding Corporation, a Delaware Corporation (the "Company"), provides a wide range of financial services, processing capabilities and information technology to meet the needs of educational institutions, lenders, students and guarantee agencies. The Company was formed in 1997 in connection with the reorganization (the "Reorganization") of the Student Loan Marketing Association, a government-sponsored enterprise (the "GSE"), pursuant to the Student Loan Marketing Association Reorganization Act of 1996 (the "Privatization Act"). The Privatization Act required the GSE to propose to shareholders a plan of reorganization under which their share ownership would convert to an equivalent share ownership in a state-chartered holding company that would own all of the stock of the GSE. Pursuant to the Privatization Act, the Reorganization was approved by the GSE's shareholders on July 31, 1997 and effected on August 7, 1997. The Privatization Act requires the GSE to transfer its business to the Company and dissolve on or before September 30, 2008. During the period prior to the dissolution of the GSE (the "Wind-Down Period"), the GSE is subject to various limitations on its business and activities. See "-- Operations During the Wind-Down Period" and "Regulation -- The Privatization Act."

Chartered by an act of Congress in 1972, the GSE's stated mission was to enhance access to post-secondary education by providing a national secondary market and financing for guaranteed student loans. As of December 31, 1997, the Company's managed portfolio of student loans totaled approximately $43.6 billion (including loans owned, loans securitized and loan participations). The Company also had commitments to purchase $17.5 billion of additional student loans or participations therein as of December 31, 1997. While the Company continues to be the leading purchaser of student loans, its business has expanded over its first quarter of a century, reflecting changes in both the education sector and the financial markets.

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Primarily a wholesale provider of credit and a servicer of student loans, the Company serves a diverse range of clients including over 900 financial and educational institutions and state agencies. Through its six regional loan servicing centers, the Company processes student loans for approximately five million borrowers and is recognized as the nation's pre-eminent servicer of student loans. The Company also provides and arranges infrastructure finance for colleges and universities. See "-- Specialized Financial Services -- Academic Facilities Financings and Student Loan Revenue Bonds."

The Company believes that it has successfully fulfilled the GSE's original mandate by fostering a thriving, competitive student loan market and has maintained its leadership position in the education finance industry due to its focus on customer relationships, value-added products and services, superior loan servicing capabilities and a sound financial management strategy. In recognition of the increasingly important role that college and university administrators play in the student loan process, the Company has adopted a school-based growth strategy. The Company's core marketing strategy is to provide schools and their students with simple, flexible and cost-effective products and services so that schools will choose to work with the Company. This strategy, combined with superior servicing and technology capabilities, has helped the Company to build valuable partnerships with schools, lenders, guarantee agencies and others.

INDUSTRY OVERVIEW

The student loan industry provides affordable financing to students and their families to fund post-secondary education. The large majority of student loans are made under federally sponsored programs, although many students and parents secure education credit through private student loan programs. The federally sponsored student loans programs are highly regulated. Under programs sponsored by the federal government, banks and other lenders that satisfy statutory eligibility requirements can make student loans at below-market rates due to subsidies and guarantees. The largest student loan program, formerly called the Guaranteed Student Loan Program and now known as the FFELP, was created in 1965 to ensure low-cost access by families to a full range of post-secondary educational institutions. In 1972, to encourage further bank participation in the Guaranteed Student Loan Program, Congress established the GSE as a for-profit, stockholder-owned national secondary market for student loans. The FFELP industry currently includes a network of approximately 4,813 originators and 6,300 educational institutions and is collectively guaranteed and administered by 37 state-sponsored or non-profit guarantee agencies under contract with the DOE. In addition to the Company, a number of non-profit entities, banks and other financial intermediaries operate as secondary markets for student loans. The Company believes that lender participation in the FFELP is relatively concentrated, with an estimated 93 percent of outstanding loans held by the top 100 participants, including approximately one-third owned or managed by the Company as of September 30, 1996. The Higher Education Act is reauthorized by Congress approximately every six years. The next reauthorization is required in 1998 and the FFELP is subject to change at that time. The provisions of the FFELP are also subject to revision from time to time by Congress.

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Demand for student loans has risen substantially over the last several years. Higher education tuition cost and fee increases continue to exceed the inflation rate. Over half of all full-time college students today depend on some form of borrowing, compared to just over 35 percent in 1985. In addition, federal legislation enacted in late 1992 expanded loan limits and borrower eligibility. All of these factors contributed to an increase of over 50 percent in annual federally guaranteed student loan volume ($24 billion in FY 1994 (including FDSLP volume) from $15 billion in FY 1992). Estimated future increases in tuition costs and college enrollments are expected to prompt further growth in the student loan market.

In 1993, Congress expanded a previously established pilot program into the FDSLP, which is administered by the DOE. Established as an alternative to the private sector-based FFELP, the FDSLP accounted for approximately one-third of all new federally sponsored student loans issued in academic year 1996-97. Under the FDSLP, the federal government contracts with third parties for loan administration and collections services while financing its lending activity through U.S. Treasury borrowings.

PRODUCTS AND SERVICES

Loan Purchases. The Company's student loan purchases primarily involve two federally sponsored programs. The Company principally purchases Stafford loans, PLUS loans and SLS loans originated under the FFELP, all of which are insured by state-related or non-profit guarantee agencies and are reinsured by the DOE. The Company also purchases student loans originated under the Health Education Assistance Loan program ("HEAL") that are insured directly by the United States Department of Health and Human Services. As of December 31, 1997, the Company's managed portfolio of student loans totaled $43.6 billion, including $39.4 billion of FFELP loans (including loans owned, loans securitized and loan participations) and $2.7 billion of HEAL loans.

In order to further meet the educational credit needs of students, the Company in 1996 sponsored the creation of the private Signature Education Loansm program, with numerous lenders participating nationwide. Under this program, the Company performs certain origination services on behalf of the participating lenders. The Company insures these loans through its HEMAR Insurance Corporation of America ("HICA") subsidiary. Most of the HICA-insured loans purchased by the Company are part of "bundled" loan programs that include FFELP loans. The Company also purchases loans originated under various other HICA-insured loan programs. As of December 31, 1997, the Company owned approximately $1.5 billion of such privately insured education loans, including HICA-insured Signature Education Loans/sm/.

The Company purchases student loans primarily from commercial banks. The Company also purchases student loans from other eligible FFELP lenders, including savings and loan associations, mutual savings banks, credit unions, certain pension funds and insurance companies, educational institutions and state and private non-profit loan originating and secondary market agencies.

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Most lenders using the secondary market hold loans while borrowers are in school and sell loans shortly before conversion to repayment status, when servicing costs increase significantly. Traditionally, the Company has purchased most of its loans just before their conversion to repayment status, although the Company also buys "in-school" loans and loans in repayment. The Company purchases loans primarily through commitment contracts, but also makes "spot" purchases. Approximately two-thirds of the Company's new loan purchases were made pursuant to purchase commitment contracts in 1996 and 1997. The Company enters into commitment contracts with lenders to purchase loans up to a specified aggregate principal amount over the term of the contract, which is usually two to three years. Under the commitment contracts, lenders have the right, and in most cases the obligation, to sell to the Company the loans they own over a specified period of time at a purchase price that is based on certain loan characteristics.

In conjunction with commitment contracts, the Company frequently provides selling institutions with operational support in the form of PortSS(R), an automated loan administration system for the lender's use at its own offices before loan sale, or in the form of loan origination and interim servicing provided through one of the Company's loan servicing centers (ExportSS(R)). In 1996 and 1997, more than two-thirds of the Company's purchase commitment volume came from users of PortSS(R) and ExportSS(R). The Company also offers commitment clients the ability to originate loans and then transfer them to the Company for servicing (TransportSSsm). PortSS(R), ExportSS(R) and TransportSSsm provide the Company and the lender assurance that loans will be efficiently administered by the Company and that borrowers will have access to the Company's repayment options and benefits. The growth in volume generated by PortSS, ExportSS and TransportSS demonstrates the importance of the Company's investment in these systems in past years.

In a spot purchase, the Company competes with other secondary market participants to purchase a portfolio of eligible loans from a selling holder when such holder decides to offer its loans for sale. The Company made approximately one-third of its purchases of educational loans through spot purchases in 1996 and 1997. In general, spot purchase volume is more costly than volume purchased under commitment contracts.

In the past, the Company also has offered eligible borrowers a program for consolidation of eligible insured loans into a single new insured loan with a term of 10 to 30 years. The Higher Education Act of 1965, as amended (the "Higher Education Act"), provides that borrowers may consolidate with one of their loan holders or may consolidate with a separate lender if they cannot obtain a consolidation loan with an income-sensitive repayment plan that they deem acceptable from their loan holders. As of December 31, 1997, the Company owned approximately $9.1 billion of such consolidation loans, known as SMARTsm Loan Accounts. Following enactment of the Emergency Student Loan Consolidation Act 1997, which made significant changes to the FFELP loan consolidation program, the Company announced that, effective as of November 13, 1997, it had suspended its loan consolidation program (marketed as the SMART Loan(sm) program). The new legislation made it difficult for the Company to participate in the FFELP consolidation loan program for profitability reasons. The Company does, however, strongly endorse the principle of the legislation that allows FDSLP and FFELP borrows to consolidate their loans under either program and plans to continue to press for changes that will enable the Company to once again participate in the FFELP consolidation loan program.

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Borrower Benefits and Program Technology Support. To create customer preferences and compete more effectively in the student loan marketplace, the Company has developed a comprehensive set of loan programs and services for borrowers, including numerous loan restructuring and repayment options and programs that encourage and reward good repayment habits. The Company also provides counseling and information programs (including a world wide web site) that help borrowers and reinforce relationships with college and university customers and lender partners.

Under the Company's Great Rewards(R) program, certain FFELP borrowers who make their first 48 monthly payments on time receive a two percentage-point interest rate reduction for the remaining term of the loan. Other programs credit students an amount equal to part of the loan origination fees they pay and modestly reduce interest costs for use of automatic debit accounts. The Company also provides financial aid administrators at colleges and universities with innovative products and services that simplify the lending process, including electronic funds transfer services and loan information and management software that enables college application data to be transferred electronically between program participants.

Joint Venture with The Chase Manhattan Bank. In the third quarter of 1996, the Company restructured its business relationship with The Chase Manhattan Bank ("Chase"), which, with an estimated market share of 8.0 percent, is the largest originator of student loans under the FFELP. Under the restructured arrangement, the Company and Chase Education Holdings, Inc., a wholly owned subsidiary of Chase, are equal owners of Education First Finance LLC and Education First Marketing LLC (collectively, the "Joint Venture"). Education First Marketing LLC is responsible for marketing education loans to be made by Chase and its affiliates to schools and borrowers. Shortly after such loans are made by Chase and its affiliates, the loans are purchased on behalf of Education First Finance LLC by the Chase/Sallie Mae Education Loan Trust (the "Trust"), which presently finances these purchases through the sale of loan participations to the Company and Chase. As of December 31, 1997, the Trust owned approximately $3.9 billion of federally insured education loans. Substantially all loans owned by the Trust are serviced on behalf of the Trust by Sallie Mae Servicing Corporation, the Company's wholly owned servicing subsidiary ("SMSC"), on a fee-for-service basis.

SERVICING

In 1980, the Company began servicing its own portfolios in order to better control costs and manage risks. In late 1995, in connection with the commencement of its securitization program, the Company transferred its servicing operations to SMSC. Through SMSC, the Company is now the nation's largest FFELP loan servicer, and management believes that the Company is recognized as the premier service quality and technology provider in the student loan industry. The Company believes that its processing capability and service excellence are integral to its school-based growth strategy. As of December 31, 1997, the Company serviced approximately $49.7 billion of loans, including approximately $27.3 billion of loans owned by the GSE and $14.1 billion owned by nine securitization trusts sponsored by the GSE, $4.5 billion of loans currently owned by ExportSS(R) customers and $3.8 billion owned by the Chase Joint Venture Trust.

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The Company currently has six loan servicing centers, located in the states of Florida, Kansas, Massachusetts, Pennsylvania, Texas and Washington. This geographic coverage, together with total systems integration among centers, facilitates operations and customer service.

The DOE and the various guarantee agencies prescribe rules and regulations that govern the servicing of federally insured student loans. The Company's origination and servicing systems, internal procedures and highly trained staff support compliance with these regulations, are designed to promote asset integrity and provide superior service to borrowers. The Company uses state-of-the-art imaging technology to further increase servicing productivity and capacity.

SPECIALIZED FINANCIAL SERVICES

The Company, principally through the GSE, engages in a number of specialty financial services related to higher education credit, including collateralized financing of FFELP and other education loan portfolios (warehousing advances), credit support for student loan revenue bonds, portfolio investments in student loan revenue and facilities bonds, underwritings of academic facilities bonds and surety bond support for non-federally insured student loans.

Warehousing Advances. Warehousing advances are secured loans to financial and educational institutions to fund FFELP and HEAL loans and other forms of education-related credit. As of December 31, 1997, the Company held approximately $1.9 billion of warehouse loans with an average term of 4.5 years. These loans remain assets of the GSE, but the GSE can extend new warehousing advances during the Wind-Down Period only pursuant to financing commitments in place as of August 7, 1997. As of December 31, 1997, the GSE had in place approximately $3.4 billion of such commitments. The Company does not expect that its non-GSE affiliates will continue this line of business.

Academic Facilities Financings and Student Loan Revenue Bonds. Since 1987, the GSE has provided facilities financing and commitments for future facilities financing to approximately 250 educational institutions. Certain of these financings are secured either by a mortgage on the underlying facility or by other collateral. The GSE also invests in student loan revenue obligations. In late 1995, the GSE established a broker-dealer subsidiary, Education Securities, Inc. ("ESI"), which manages the GSE's municipal bond portfolio and is developing an array of specialized underwriting and financial advisory services for the education sector. The Company anticipates that it will reduce its investment activity in academic facilities and student loan revenue bond products during the Wind-Down Period. As of December 31, 1997, these portfolios totaled $1.4 billion and $197 million, respectively.

Letters of Credit. In the past, the GSE has offered letters of credit to guarantee issues of state and non-profit agency student loan revenue bonds. Currently outstanding letters of credit have original terms of up to 17 years. As of December 31, 1997, the GSE had approximately $4.8 billion of such commitments outstanding. During the Wind-Down Period, letter of credit activity by the GSE will be limited to guarantee commitments in place as of August 7, 1997.

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Private Student Loan Insurance. In 1995, the GSE acquired HICA, a South Dakota stock insurance company engaged exclusively in insuring lenders against credit loss on their education-related, non-federally insured loans to students attending post-secondary educational institutions. Loans owned by the GSE are a significant portion of HICA's insured loan portfolio. See "-- Products and Services -- Loan Purchases."

FINANCING/SECURITIZATION

The GSE obtains funds for its operations primarily from the sale of debt securities in the domestic and overseas capital markets, and through public offerings and private placements of U.S. dollar-denominated and foreign currency-denominated debt of varying maturities and interest rate characteristics. GSE debt securities are currently rated at the highest credit rating level by Moody's Investors Service and Standard & Poor's. The Company expects that the credit rating on any debt securities of the Company will be lower than that of the GSE's debt securities.

The GSE uses interest rate and currency exchange agreements (collateralized where appropriate), U.S. Treasury securities, interest rate futures contracts and other hedging techniques to reduce its exposure to interest rate and currency fluctuations arising out of its financing activities and to match the characteristics of its assets and liabilities. The GSE has also issued preferred stock to obtain funds, including preferred stock held by the Company. Under the Privatization Act, the GSE may issue debt with maturity dates through September 30, 2008 to fund student loan and other permitted asset purchases. Upon the GSE's dissolution pursuant to the Privatization Act, the GSE must transfer any remaining GSE obligations into a defeasance trust for the benefit of the holders of such obligations together with cash or full faith and credit obligations of the United States, or an agency thereof, in amounts sufficient, as determined by the Secretary of the Treasury, to pay the principal and interest on the deposited obligations. If the GSE has insufficient assets to fully fund such GSE debt, the Company must transfer sufficient assets to the trust to account for this shortfall. The Privatization Act requires that upon the dissolution of the GSE on or before September 30, 2008, the GSE shall repurchase or redeem or make proper provisions for repurchase or redemption of the GSE's outstanding preferred stock.

Since late 1995 the Company has further diversified its funding sources, independent of its GSE borrower status, by securitizing a portion of its student loan assets. Securitization is an off-balance sheet funding mechanism that the Company effects through the sale of portfolios of student loans by the GSE to SLM Funding Corporation, a bankruptcy-remote, special-purpose, wholly owned subsidiary of the GSE, which in turn sells the student loans to an independent owner trust that issues securities to fund the purchase of the student loans. The securitization trusts typically issue several classes of debt securities rated at the highest investment grade level. The GSE has not guaranteed such debt securities and has no obligation to ensure their repayment. Because the securities issued by the trusts through securitization are not GSE securities, the Company has been and in the future expects to be able to fund its student loans to term through securitization, even for those assets with final maturities that extend beyond the Wind-Down Period. The DOE has concurred with the Company's position that a 30 basis point per annum offset fee imposed on loans held by the GSE does not apply to securitized loans. See "Legal Proceedings." The Company anticipates that securitization will remain a primary student loan funding mechanism for the Company when it begins to conduct student loan purchase activity through a non-GSE subsidiary. In addition to the foregoing, the Company obtains funding through a bank line of credit.

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OPERATIONS DURING THE WIND-DOWN PERIOD

Privatization enables the Company to commence new business activities without regard to restrictions in the GSE's charter. The stock of certain GSE subsidiaries, including SMSC, HICA and ESI, has been transferred to the Company. Accordingly, the business activities of these subsidiaries are no longer subject to restrictions contained in the GSE's charter. In addition, the GSE's employees have been transferred to Sallie Mae, Inc. (the "Management Company").

During the Wind-Down Period, the GSE generally is prohibited from conducting new business except in connection with student loan purchases through September 30, 2007 or with other outstanding contractual commitments, and from issuing new debt obligations that mature beyond September 30, 2008. The GSE has transferred personnel and certain assets to the Company or other non-GSE affiliates. Student loans, warehousing advances and other program-related or financial assets (such as portfolio investments, letters of credit, swap agreements and forward purchase commitments) have not been and are generally not expected to be transferred. Neither the Company nor any of its non-GSE affiliates may make secondary market purchases of FFELP loans for so long as the GSE is actively acquiring insured student loans. During the Wind-Down Period, GSE operations will be managed pursuant to arm's-length service agreements between the GSE and one or more of its non-GSE affiliates. The Privatization Act also provides certain restrictions on intercompany relations between the GSE and its affiliates during the Wind-Down Period.

COMPETITION

The Company is the major financial intermediary for higher education credit, but is subject to competition on a national basis from several large commercial banks and non-profit secondary market agencies and on a state or local basis from smaller banks and state-based secondary markets. In addition, the availability of securitization for student loan assets has created new competitive pressures for traditional secondary market purchasers. Based on the most recent information from the DOE and management estimates, at the end of fiscal year 1995, the GSE's share (in dollars) of outstanding FFELP loans was 33 percent, while banks and other financial institutions held 48 percent and state secondary market participants held 19 percent. Although Congress establishes loan limits and interest rates on student loans, management believes that market share in the FFELP industry is increasingly a function of school and student desire for borrower benefits and superior customer service. FFELP providers have been aggressively competing on the basis of enhanced products and services in recent years.

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Because the GSE historically has been confined by statute to secondary market activity, it has depended mainly on its network of lender partners and its school-based strategy for new loan volume. Because the Company is not subject to the same limitations as the GSE, it plans to heighten its visibility with consumers to favorably position itself for future new product offerings.

The Company also faces competition for new and existing loan volume from the FDSLP. Based on current DOE projections, the Company estimates that total student loan originations for the academic years 1994-95, 1995-96 and 1996-97 were $22.2 billion, $24.7 billion and $27.4 billion, respectively, of which FDSLP originations represented approximately 7 percent, 31 percent and 32 percent, respectively. The DOE projects that FDSLP originations will represent 35 percent of total student loan originations in the 1997-98 academic year.

The DOE has also begun to offer FFELP borrowers the opportunity to refinance or consolidate FFELP loans into FDSLP loans upon certification that the holder of their FFELP loans does not offer an income-sensitive payment plan acceptable to the borrower. As of December 31, 1997, approximately $608 million of the GSE's FFELP loans had been consolidated into the FDSLP. In early 1995, the Company began offering an income-sensitive payment plan. The FDSLP, however, also provides an income-contingent option not available under the FFELP program that may be more attractive to certain borrowers. Under this repayment option, the government will ultimately forgive student loan debt after 25 years. Effective November 13, 1997, the Company suspended its loan consolidation program. See "-- Products and Services -- Loan Purchases." It is not certain what action, if any, Congress will take with regard to the FDSLP in connection with the anticipated reauthorization of the Higher Education Act. Based on public statements by members of Congress and the Administration, however, management believes that the FFELP and the FDSLP will continue to coexist as competing programs for the foreseeable future.

REGULATION

As a government-sponsored enterprise, the GSE is organized under federal law and its operations are restricted by its government charter. Although privatization permits the Company's private activities to expand through non-GSE subsidiaries, the GSE's operations continue to be subject to broad federal regulation, during the Wind-Down Period.

The Privatization Act

The Privatization Act established the basic framework for the Reorganization and imposes certain restrictions on the operations of the Company and its subsidiaries during the Wind-Down Period. The Privatization Act amends the GSE's charter to require certain enhanced regulatory oversight of the GSE to ensure its financial safety and soundness. See "-- GSE Regulation."

Reorganization. The Privatization Act required the GSE to propose to shareholders a plan of reorganization under which their share ownership in the GSE would be automatically converted to an equivalent share ownership in a state-chartered holding company that would own all of the common stock of the GSE. On July 31, 1997, the GSE's shareholders approved the Reorganization in fulfillment of this provision. The Privatization Act requires that the GSE be liquidated on or before September 30, 2008, upon which its federal charter will be rescinded. During the Wind-Down Period, the Company will remain a passive entity that supports the operations of the GSE and its other non-GSE subsidiaries, and any new business activities will be conducted through such subsidiaries.

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The Privatization Act requires all personnel and certain assets to be transferred to non-GSE subsidiaries of the Company in connection with the Reorganization, including the transfer of the GSE's interest in certain subsidiaries. The GSE's student loans and related contracts, warehousing advances and other program-related or financial assets (such as portfolio investments, letters of credit, swap agreements and forward purchase commitments) and any non-material assets that the GSE Board determines to be necessary for or appropriate to continued GSE operations, may be retained by the GSE. Employees of the GSE were transferred to the Management Company at the effective time of the Reorganization. Employees who were employed by non-GSE subsidiaries of the GSE before the Reorganization continue to be employed by such subsidiaries.

During the Wind-Down Period, the GSE is restricted in the new business activities it may undertake. The GSE may continue to purchase student loans only through September 30, 2007, and warehousing advance, letter of credit and standby bond purchase activity by the GSE is limited to takedowns on contractual financing and guarantee commitments in place at the effective time of the Reorganization. In addition, the Company, and its non-GSE subsidiaries may not make secondary market purchases of FFELP loans for so long as the GSE is actively acquiring insured student loans.

In certain circumstances, the GSE will continue to serve as a lender of last resort and will provide secondary market support for the FFELP upon the request of the Secretary of Education. If and to the extent that the GSE performs such functions, however, it will not be required to pay a statutorily imposed 30 basis point offset fee on such loans. The GSE may transfer assets and declare dividends, from time to time, if it maintains a minimum capital ratio of at least 2 percent until the year 2000. After that time, charter amendments effected by the Privatization Act require that the GSE maintain a minimum capital ratio of at least 2.25 percent. In the event that the GSE does not maintain the required minimum capital ratio, the Company is required to supplement the GSE's capital to achieve such minimum capital ratio.

The GSE's debt obligations, including debt obligations that were outstanding at the time of the Reorganization, continue to be outstanding obligations of the GSE and will not be transferred to any other entity (except in connection with the defeasance trust described below). See "-- GSE Dissolution After Reorganization." The Privatization Act provides that the Reorganization does not modify the attributes accorded to the debt obligations of the GSE by the GSE's charter. During the Wind-Down Period, the GSE can continue to issue debt in the government agency market to finance student loans and other permissible asset purchases. The maturity date of such issuances, however, may not extend beyond September 30, 2008, the GSE's final dissolution date. This restriction does not apply to debt issued to finance any lender of last resort or secondary market purchase activity requested by the Secretary of Education. The Privatization Act is clear that the Reorganization (and the subsequent transfer of any remaining GSE debt to the defeasance trust described below) will not modify the legal status of any GSE debt obligations, whether such obligations existed at the time of Reorganization or are subsequently issued.

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Oversight Authority. During the Wind-Down Period, the Secretary of the Treasury has extended oversight authority to monitor the activities of the GSE and, in certain cases, the Company and its non-GSE subsidiaries to the extent that the activities of such entities are reasonably likely to have a material impact on the financial condition of the GSE. The U.S. Department of the Treasury has established the Office of Sallie Mae Oversight to perform these functions. During this period, the Secretary of the Treasury may require that the GSE submit periodic reports regarding any potentially material financial risk of its associated persons and its procedures for monitoring and controlling such risk. The Company is expressly prohibited from transferring ownership of the GSE or causing the GSE to file bankruptcy without the approval of the Secretary of the Treasury and the Secretary of Education. Each of the Secretary of Education and the Secretary of the Treasury has express authority to request that the Attorney General bring an action, or may bring an action under the direction and control of the Attorney General, in the United States District Court for the District of Columbia, for the enforcement of any provision of the GSE's safety and soundness requirements or the requirements of the Privatization Act in general.

Restrictions on Intercompany Relations. The Privatization Act restricts intercompany relations between the GSE and its affiliates during the Wind-Down Period. Specified corporate formalities must be followed to ensure that the separate corporate identities of the GSE and its affiliates are maintained. Specifically, the Privatization Act provides that the GSE must not extend credit to, nor guarantee any debt obligations of, the Company or its subsidiaries. The Privatization Act also provides that (i) the funds and assets of the GSE must at all times be maintained separately from the funds and assets of the Company and its subsidiaries, (ii) the GSE must maintain books and records that clearly reflect the assets and liabilities of the GSE, separate from the assets and liabilities of the Company or its subsidiaries, (iii) the GSE must maintain a corporate office that is physically separate from any office of the Company and its subsidiaries, (iv) no director of the GSE who is appointed by the President may serve as a director of the Company and (v) at least one officer of the GSE must be an officer solely of the GSE.

Furthermore, the Privatization Act mandates that transactions between the GSE and the Company, including any loan servicing arrangements, shall be on terms no less favorable to the GSE than the GSE could obtain from an unrelated third party, and any amounts collected on behalf of the GSE by the Company pursuant to a servicing contract or other arrangement between the GSE and the Company shall be immediately deposited by the Company to an account under the sole control of the GSE.

Limitations on Company Activities. During the Wind-Down Period, the Company must remain a passive entity that holds the stock of its subsidiaries and provides funding and management support to such subsidiaries. The Privatization Act contemplates that until the GSE is dissolved, the Company's business activities will be conducted through subsidiaries. However, the Privatization Act extends to the Company and its subsidiaries the GSE's "eligible lender" status for loan consolidation and secondary market purchases. See "Business."

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The Company and its non-GSE subsidiaries generally may not begin to make secondary market purchases of FFELP student loans for so long as the GSE is actively acquiring insured student loans. Subject to the foregoing, the Company may elect, at any time, to transfer new student loan purchase activity from the GSE to one of its non-GSE subsidiaries. Under the Higher Education Act, loans acquired after August 10, 1993 and held by the GSE are subject to a 30 basis point per annum "offset fee." The offset fee does not apply to loans held or securitized by the Company or its non-GSE subsidiaries.

Although the GSE may not finance the activities of the Company's non-GSE subsidiaries, it may, subject to its minimum capital requirements, dividend retained earnings and surplus capital to the Company, which in turn may use such amounts to support its non-GSE subsidiaries. The GSE's charter requires that the GSE maintain a minimum capital ratio of at least 2 percent until the year 2000, and charter amendments effected by the Privatization Act require that the GSE maintain a minimum capital ratio of at least 2.25 percent thereafter. In the event that the GSE's capital falls below the applicable required level, the Company is required to supplement the GSE's capital to achieve such required level. The Privatization Act further directs that, unless and until distributed as dividends by the GSE, under no circumstances shall the assets of the GSE be available or used to pay claims or debts of or incurred by the Company.

In exchange for the payment of $5 million to the District of Columbia Financial Responsibility and Management Assistance Authority (the "Control Board"), the Company and its other subsidiaries may continue to use the name "Sallie Mae," but not the name "Student Loan Marketing Association," as part of their legal names or as a trademark or service mark. Interim disclosure requirements in connection with securities offerings and promotional materials are required to avoid marketplace confusion regarding the separateness of the GSE and its affiliated entities. During the Wind-Down Period and until one year after repayment of all outstanding GSE debt, the "Sallie Mae" name may not be used by any Company unit that issues debt obligations or other securities to any person or entity other than the Company or its subsidiaries. In addition, the Privatization Act required the Company to issue certain warrants to purchase the Company's Common Stock (the "Warrants") to the Control Board. These provisions of the Privatization Act were part of the terms negotiated with the Administration and Congress in conjunction with the GSE's privatization. The Company issued the Warrants on August 7, 1997.

GSE Dissolution After Reorganization. The Privatization Act provides that the GSE will liquidate and dissolve on September 30, 2008, unless an earlier dissolution is requested by the GSE and the Secretary of Education makes no finding that the GSE continues to be needed as a lender of last resort under the GSE charter or to purchase loans under certain agreements with the Secretary of

Education. In connection with such dissolution, the GSE must transfer any remaining GSE obligations into a defeasance trust for the benefit of the holders of such obligations, along with cash or full faith and credit obligations of the United States, or an agency thereof, in amounts sufficient, as determined by the Secretary of the Treasury, to pay the principal and interest on the deposited obligations. As of December 31, 1997, the GSE had $381 million in current carrying value of debt obligations outstanding with maturities after September 30, 2008. If the GSE has insufficient assets to fully fund such GSE debt obligations outstanding at the time of dissolution, the Company must transfer sufficient assets to the trust to account for this shortfall. The Privatization Act also requires that on the dissolution date, the GSE shall repurchase or redeem, or make proper provisions for the repurchase or redemption of, any outstanding shares of preferred stock, of which the GSE has issued Series A and B Adjustable Rate Cumulative Preferred Stock. The Series A Preferred Stock is carried at its liquidation value of $50.00 per share for a total of $214 million and pays a variable dividend that has been at its minimum rate of 5 percent per annum for the last several years. The Series B Preferred Stock is carried at its liquidation value of $500,000 per share for a total of $100 million and pays a variable dividend that is equal to 3-month London Interbank Offered Rate ("LIBOR") plus one percent per annum divided by 1.377. Upon dissolution, the GSE charter will terminate, and any assets that the GSE continues to hold after establishment of the trust or that remain in the trust after full payment of the remaining obligations of the GSE assumed by the trust will be transferred to the Company or its affiliates, as determined by the Company's Board of Directors.

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GSE Regulation

The GSE's structure and the scope of its business activities are set forth in its charter. The charter, which is subject to review and change by Congress, sets forth certain restrictions on the GSE's business and financing activities and charges the federal government with certain oversight responsibilities with respect to these activities. The GSE's charter grants the GSE certain exemptions from federal and state laws. The GSE's charter's primary regulatory restrictions and exemptions, including certain provisions added by the Privatization Act, are summarized as follows:

1. Seven members of the GSE's 21-member Board of Directors are appointed by the President of the United States. The other 14 members are elected by the Company as the holder of the GSE's Common Stock. The Chairman of the Board is designated by the President of the United States from among the Board's 21 members.

2. Debt obligations issued by the GSE are exempt from state taxation to the same extent as United States government obligations. The GSE is exempt from all taxation by any state or by any county, municipality or local taxing authority except with respect to real property taxes. The GSE is not exempt from federal corporate income taxes.

3. All stock and other securities of the GSE are deemed to be exempt securities under the laws administered by the SEC to the same extent as obligations of the United States.

4. The GSE may conduct its business without regard to any qualification or similar statute in any state of the United States, including the District of Columbia, the Commonwealth

of Puerto Rico and the territories and possessions of the United States (although the scope of the GSE's business is generally limited by its federal charter).

5. The issuance of GSE debt obligations must be approved by the Secretary of the Treasury.

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6. The GSE is required to have its financial statements examined annually by independent certified public accountants and to submit a report of the examination to the Secretary of the Treasury. The Department of the Treasury is also authorized to conduct audits of the GSE and to otherwise monitor the GSE's financial condition. The GSE is required to submit annual reports of its operations and activities to the President of the United States and Congress. The GSE must pay up to $800,000 per year to the Department of the Treasury to cover the costs of its oversight.

7. The GSE is subject to certain "safety and soundness" regulations, including the requirement that the GSE maintain a 2.00 percent capital adequacy ratio (increasing to 2.25 percent after January 1, 2000). The GSE may pay dividends only upon certification that, at the time of a dividend declaration and after giving effect to the payment of such dividend, the capital adequacy ratio is satisfied.

8. The Secretary of Education and the Secretary of the Treasury have certain enforcement powers under the GSE's charter.

9. A 30 basis point annual offset fee, unique to the GSE, is payable to the Secretary of Education on student loans purchased and held by the GSE on or after August 10, 1993. See "Legal Proceedings."

10. In certain circumstances, at the request of the Secretary of Education, the GSE is required to act as a lender of last resort to make FFELP loans when other private lenders are not available. Such loans are not subject to the 30 basis point offset fee on loans held by the GSE.

Other Regulation

Under the Higher Education Act, the GSE is an "eligible lender" for purposes only of purchasing and holding loans made by other lenders and making consolidation and lender of last resort loans. Like other participants in insured student loan programs, the Company is subject, from time to time, to review of its student loan operations by the General Accounting Office, the DOE and certain guarantee agencies. The laws relating to insured student loan programs are subject to revision from time to time and changes to such laws are beyond the Company's control. In addition, SMSC, as a servicer of student loans, is subject to certain DOE regulations regarding financial responsibility and administrative capability that govern all third party servicers of insured student loans. Failure to satisfy such standards may result in the loss of the government guarantee of FFELP loans. ESI is a broker-dealer registered with the SEC and the National Association of Securities Dealers (the "NASD") and is licensed to do business in 50 states. ESI is subject to regulation by the SEC and the NASD as a municipal security broker-dealer. HICA, a South Dakota stock insurance company, is subject to the ongoing regulatory authority of the South

Dakota Division of Insurance and that of comparable governmental agencies in six other states.

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Non-Discrimination and Limitations on Affiliation with Depository Institutions

The Privatization Act also amended the Higher Education Act to provide that the GSE and any successor entity (including the Company) functioning as a secondary market for federally insured student loans may not engage, directly or indirectly, in any pattern or practice that results in a denial of a borrower's access to insured loans because of the borrower's race, sex, color, religion, national origin, age, disability status, income, attendance at a particular institution, length of a borrower's educational program or the borrower's academic year at an eligible institution.

Pub. L. No. 104-208, the federal budget legislation of which the Privatization Act was a part, contains amendments to the Federal Deposit Insurance Act and the Federal Credit Union Act that prohibit all government-sponsored enterprises from directly or indirectly sponsoring or providing non-routine financial support to certain credit unions and depository institutions. Depository institutions are also prohibited from being affiliates of government-sponsored enterprises. Thus, neither the Company nor any of its subsidiaries may be affiliated with a depository institution until the GSE is dissolved. Most originators of insured student loans are depository institutions that qualify as "eligible lenders" under the Higher Education Act.

As of December 31, 1997, the Company employed 4,608 employees nationwide.

Item 2. Properties

The following table lists the principal facilities owned by the Company:

LOCATION	FUNCTION	APPROXIMATE SQUARE FEET
Reston, VA	Operations/Headquarters	395,000
Wilkes Barre, PA	Loan Servicing Center	135,000
Killeen, TX	Loan Servicing Center	133,000
Lynn Haven, FL	Loan Servicing Center	133,000
Lawrence, KS	Loan Servicing Center	52,000

The Company leases approximately 36,800 square feet of office space for its loan servicing center in Waltham, Massachusetts, 39,100 square feet of office space for its loan servicing center in Spokane, Washington and 47,000 square feet of additional space for its loan servicing center in Lawrence, Kansas. The GSE leases approximately 254,000 square feet of office space in Washington, D.C. for its former headquarters. The Company has entered into and is currently negotiating subleases through the term of these leases, which expire in 2001, and other arrangements to terminate the GSE's obligations under these leases. With the exception of the Pennsylvania loan servicing center, none of the Company's facilities is encumbered by a mortgage. The Company believes that its headquarters and loan servicing centers are generally adequate to meet its long-term student loan and new business goals.

The Company's principal office is located in owned space at 11600 Sallie Mae Drive, Reston, Virginia, 20193.

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Item 3. Legal Proceedings.

The Higher Education Act imposes a 30 basis point per annum "offset fee" to student loans held by the GSE. The Secretary of Education initially interpreted the Higher Education Act to apply that fee both to loans held directly by the GSE and to loans sold by the GSE to securitization trusts. In April 1995, the Company filed suit in the U.S. District Court for the District of Columbia to challenge the constitutionality of the 30 basis point fee and the application of the fee to loans securitized by the Company. On November 16, 1995, the District Court ruled that the fee is constitutional, but that, contrary to the Secretary of Education's interpretation, the fee does not apply to securitized loans. Both the Company and the United States appealed this ruling. On January 10, 1997, the U.S. Court of Appeals for the District of Columbia Circuit struck down the Secretary of Education's interpretation, ruling that the fee applies only to loans that the GSE owns and remanding the case to the District Court with instructions to remand the matter to the Secretary of Education. In addition, the Court of Appeals upheld the constitutionality of the offset fee for loans owned by the GSE. The offset fee applies annually to the principal amount of student loans that the GSE holds and that were acquired on or after August 10, 1993.

On April 29, 1997, U.S. District Court Judge Stanley Sporkin ordered the DOE to decide by July 31, 1997 its final position on the application of the offset fee to loans that the GSE has securitized. On July 23, 1997, the DOE decided that the 30 basis point annual offset fee that the GSE is required to pay on student loans that it owns does not apply to student loans that the GSE has securitized. Based upon this favorable determination, a contingent gain of $97 million pre-tax that had not been recognized in income through June 30, 1997 was released and recognized in income in the third quarter of 1997. All future securitization gains will be calculated without consideration of the offset fee.

On December 19, 1996, Orange County, California filed an amended complaint against the Company in the U.S. Bankruptcy Court for the Central District of California. The case is currently pending in the U.S. District Court for the Central District of California. The complaint alleges that the Company made fraudulent representations and omitted material facts in offering circulars on various bond offerings purchased by Orange County, which contributed to Orange County's market losses and subsequent bankruptcy. The complaint seeks to hold the GSE liable for losses resulting from Orange County's bankruptcy, but does not specify the amount of damages claimed. The complaint against the Company is one of numerous cases filed by Orange County that have been coordinated for discovery purposes. Other defendants include Merrill Lynch, Morgan Stanley, KPMG Peat Marwick, Standard & Poor's and Fannie Mae. The complaint includes a claim of fraud under Section 10(b) of the Securities Exchange Act and Rule 10b-5 promulgated thereunder. The complaint also includes counts under the California Corporations Code and a count of common law fraud. On December 24, 1997, the Company filed a motion for partial summary judgment dismissing certain of Orange County's claims. The Company believes that the complaint is without merit and intends to defend the case vigorously. At this time, management believes the impact of the lawsuit will not be material to the Company.

In September 1996, the Company obtained a declaratory judgment against the Secretary of Education in the U.S. District Court for the District of Columbia to the effect that the Secretary erred in refusing to allow the Company to claim adjustments to Special Allowance Payments on certain FFELP loans that were required to be converted retrospectively from a fixed rate to a variable rate. On September 30, 1997 the U.S. Court of Appeals for the District of Columbia Circuit affirmed the District Court's decision granting the declaratory judgment.

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Item 4. Submission of Matters to a Vote of Security-Holders

Nothing to report.

Part II.

Item 5. Market for Registrant's Common Equity and Related Stockholder Matters

The Company's Common Stock is listed and traded on the New York Stock Exchange under the symbol SLM. The number of holders of record of the Company's Common Stock as of March 3, 1998 was approximately 668. The following table sets forth the high and low sales prices for the Company's Common Stock for each full quarterly period within the two most recent fiscal years . The prices in this table are adjusted to reflect a 7-for-2 stock split, which was effected on January 2, 1998 as a stock dividend of five shares for every two shares outstanding.

COMMON STOCK PRICES

		1st Quarter	2d Quarter	3d Quarter	4th Quarter
1996	High	$24 39/64	$23 55/64	$22	$28 5/64
	Low	18 5/64	18 55/64	19 25/32	22 5/64
1997	High	32 41/64	39 23/64	45 55/64	47 11/64
	Low	25 27/64	27 1/32	36 9/32	35 9/32

The Company paid regular quarterly dividends of $.1143 per share on the Common Stock in each of the first three quarters of 1996, $.1257 per share for the fourth quarter of 1996 and the first three quarters of 1997 and $.14 for the fourth quarter of 1997 and the first quarter of 1998.

Item 6. Selected Financial Data

Reference is made to the information regarding selected financial data for the fiscal years 1993 through 1997, under the heading "Selected Financial Data 1993-1997" on page 68 of the Company's 1997 Annual Report to Shareholders, which information is included as part of Exhibit 13 and is hereby incorporated by reference in this Annual Report on Form 10-K.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operation

Reference is made to the information appearing under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations" on pages 23 through 38 of the Company's 1997 Annual Report to Shareholders, which information is included as part of Exhibit 13 and is hereby incorporated by reference in this Annual Report on Form 10-K.

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Item 7a. Quantitative and Qualitative Disclosures about Market Risk

Reference is made to the information appearing under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations" on pages 34 through 36 of the Company's 1997 Annual Report to Shareholders, which information is included as part of Exhibit 13 and is hereby incorporated by reference in this Annual Report on Form 10-K.

Item 8. Financial Statements and Supplementary Data

Consolidated financial statements of the Company at December 31, 1997 and December 31, 1996 and for each of the three years in the period ended December 31, 1997 are included as part of Exhibit 13 and are incorporated by reference in this Annual Report on Form 10-K from the Company's 1997 Annual Report to Shareholders, on pages 39 through 64. The Report of the Independent Public Accountants on the consolidated balance sheet of the Company and its subsidiaries for the year ended December 31, 1997 and the related consolidated statements of income, changes in stockholders' equity and cash flows for the year then ended is included as part of Exhibit 13 and is hereby incorporated by reference in this Annual Report on Form 10-K. The Report of the Independent Public Accountants on the consolidated balance sheet of the Company and its subsidiaries for the year ended December 31, 1996 and the related consolidated statements of income, changes in stockholders' equity and cash flows for the two years in the period ended December 31, 1996 is filed separately as Financial Statement Schedule Number XX under Item 14 of this Annual Report on Form 10-K.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

Not applicable.

Part III.

Item 10. Directors and Executive Officers of the Registrant

The information as to the directors and executive officers of the Company set forth under the captions "PROPOSAL 1 -- ELECTION OF DIRECTORS -- Information Concerning Nominees" and "Executive Officers" in the Proxy Statement to be filed on Schedule 14A relating to the Company's Annual Meeting of Stockholders scheduled to be held on May 21, 1998 (the "Proxy Statement") is incorporated into this Report by reference.

Item 11. Executive Compensation

The information set forth under the caption "Executive Compensation" in the Proxy Statement is incorporated into this Report by reference.

Item 12. Security Ownership of Certain Beneficial Owners and Management.

The information set forth under the caption "COMMON STOCK INFORMATION - -- Board and Management Ownership" and "-- Principal Holders" in the Proxy Statement is incorporated into this Report by reference thereto. There are no arrangements known to the Company, the operation of which may at a subsequent date result in a change in control of the Company.

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Item 13. Certain Relationships and Related Transactions.

The information set forth under the caption "EXECUTIVE COMPENSATION -- Certain Transactions" in the Proxy Statement is incorporated into this Report by reference.

Item 14. Exhibits, Financial Statement Schedules and Reports on Form 8-K

(a) 1. Financial Statements

The financial statements listed in the accompanying index to financial statements and financial statement schedules are filed or incorporated by reference as part of this annual report.

2. Financial Statement Schedules

Schedule Number	Description
XX	Separate Report of Predecessor Accountant

All other schedules are omitted because they are not applicable or the required information is shown in the consolidated financial statements or notes thereto.

3. Exhibits

The exhibits listed in the accompanying index to exhibits are filed or incorporated by reference as part of this annual report.

(b) Reports on Form 8-K.

The Company filed the following Current Reports on Form 8-K during the fourth quarter of 1997:

<TABLE>
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DATE	ITEMS REPORTED	FINANCIAL STATEMENTS
<S>	<C>	<C>
10/21/97	Amendment to Current Report on Form 8-K filed by the Company on August 14, 1997 (which reported the reorganization of the GSE into a wholly owned subsidiary of the Company pursuant to the Privatization Act)	The financial statements of the GSE for the periods specified in 17 C.F.R. ss.210-3.05
10/29/97	Change in the Company's Certifying Accountant	None

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(c) Exhibits.

*2 Agreement and Plan of Reorganization by and among the Student Loan Marketing Association, SLM Holding Corporation, and Sallie Mae Merger Company.

**3.1 Amended and Restated Certificate of Incorporation of the Registrant

**3.2 By-Laws of the Registrant

**4 Warrant Certificate No. W-2, dated as of August 7, 1997

*10.1 Board of Director's Restricted Stock Plan

*10.2 Board of Director's Stock Option Plan

*10.3	Deferred Compensation Plan for Directors
*10.4	Incentive Performance Plan
*10.5	Stock Compensation Plan
*10.6	1993-1998 Stock Option Plan
*10.7	Supplemental Pension Plan
*10.8	Supplemental Employees' Thrift & Savings Plan (Sallie Mae 401(K) Supplemental Savings Plan)
+13	Portions of the Annual Report to Shareholders for fiscal year ended December 31, 1997 expressly incorporated by reference herein.
-21	Subsidiaries of the Registrant
+23.1	Consent of Ernst & Young LLP
+23.2	Consent of Arthur Andersen LLP
+27	Financial Data Schedule

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* Incorporated by reference to the correspondingly numbered exhibits to the Registrant's Registration Statement on Form S-4, as amended (File No. 333-21217)

** Incorporated by reference to the correspondingly numbered exhibits to the Registrant's Registration on Form S-1 (File No. 333-38391)

\+ Filed herewith

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SIGNATURES

Pursuant to the requirements of Section 13 or 15 (d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: March 27, 1998

SLM HOLDING CORPORATION

By: /s/ ALBERT L. LORD

Name: Albert L. Lord

Title: Chief Executive Officer

Pursuant to the requirement of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities indicated on the dates indicated.

<TABLE>
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SIGNATURE	TITLE	DATE

<S> <C> <C>

/S/ ALBERT L. LORD - ------------------ Albert L. Lord	Chief Executive Officer (Principal Executive Officer)	March 27, 1998
/S/ MARK G. OVEREND - ------------------- Mark G. Overend	Chief Financial Officer (Principal Financial and Accounting Officer)	March 27, 1998
/S/ EDWARD A. FOX - ----------------- Edward A. Fox	Chairman of the Board of Directors	March 27, 1998
/S/ JAMES E. BRANDON - -------------------- James E. Brandon	Director	March 27, 1998
/S/ CHARLES L. DALEY - -------------------- Charles L. Daley	Director	March 27, 1998
/S/ THOMAS J. FITZPATRICK - ------------------------- Thomas J. Fitzpatrick	Director	March 27, 1998
/S/ DIANE SUITT GILLELAND - ------------------------- Diane Suitt Gilleland	Director	March 27, 1998

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SIGNATURE	TITLE	DATE
/S/ ANN TORRE GRANT - ------------------- Ann Torre Grant	Director	March 27, 1998
/S/ RONALD F. HUNT - ------------------ Ronald F. Hunt	Director	March 27, 1998
/S/ BENJAMIN J. LAMBERT, III - ---------------------------- Benjamin J. Lambert, III	Director	March 27, 1998
/S/ MARIE V. McDEMMOND	Director	March 27,

1998
- ----------------------
Marie V. McDemmond

/S/ BARRY A. MUNITZ	Director	March 27, 1998
- ------------------- Barry A. Munitz		
/S/ A. ALEXANDER PORTER	Director	March 27, 1998
- ----------------------- A. Alexander Porter		
/S/ WOLFGANG SCHOELLKOPF	Director	March 27, 1998
- ------------------------ Wolfgang Schoellkopf		
/S/ STEVEN L. SHAPIRO	Director	March 27, 1998
- --------------------- Steven L. Shapiro		
/S/ RANDOLPH H. WATERFIELD, JR.	Director	March 27, 1998
- ----------------------------- Randolph H. Waterfield, Jr.		

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Exhibit 13

Management's Discussion and Analysis
of Financial Condition and Results of Operations
Years ended December 31, 1995-1997
(Dollars in millions, except per share amounts)

Overview

SLM Holding Corporation ("SLM Holding") was formed on February 3, 1997 as a wholly owned subsidiary of the Student Loan Marketing Association (the "GSE"). On August 7, 1997, pursuant to the Student Loan Marketing Association Reorganization Act of 1996 (the "Privatization Act") and approval by shareholders of an agreement and plan of reorganization, the GSE was reorganized into a subsidiary of SLM Holding (the "Reorganization"). SLM Holding is a holding company that operates through a number of subsidiaries including the GSE. References herein to the "Company" refer to the GSE and its subsidiaries for periods prior to the Reorganization and to SLM Holding and its subsidiaries for periods after the Reorganization.

On January 2, 1998, SLM Holding effected a 7-for-2 stock split through a stock dividend of an additional five shares for every two owned. All share and per share amounts have been restated to reflect the stock split.

The GSE was established in 1973 as a for-profit, stockholder-owned, government-sponsored enterprise to support the education credit needs of students by, among other things, promoting liquidity in the student loan marketplace through secondary market purchases. On July 31, 1997, at a Special Meeting of Shareholders convened pursuant to the Privatization Act, the shareholders approved the Reorganization. The Reorganization was consummated on August 7, 1997 and each outstanding share of common stock, par value $.20 per share, of the GSE was converted into one share of common stock, par value $.20 per share, of SLM Holding. Under the terms of the Reorganization, all GSE employees were transferred to non-GSE subsidiaries on August 7, 1997 and on December 31, 1997 the GSE transferred certain assets, including stock in certain subsidiaries, to SLM Holding or one of its non-GSE subsidiaries. The shareholders also elected 15 nominees of the Committee to Restore Value at Sallie Mae ("CRV") as the initial Board of Directors of SLM Holding. The new Board of Directors installed a new management team to implement the business plan that the CRV had presented to the shareholders.

The Company is the largest source of financing and servicing for education loans in the United States primarily through its participation in the Federal Family Education Loan Program ("FFELP"), formerly the Guaranteed Student Loan Program, and the Health Education Assistance Loan Program ("HEAL"). The Company's products and services include student loan purchases and commitments to purchase student loans as well as operational support to originators of student loans and to post-secondary education institutions and other education-related financial services. The Company also purchases privately insured loans, principally those insured by a wholly owned subsidiary.

Both the FFELP and HEAL programs are highly regulated. There are three types of FFELP loans: Stafford loans, PLUS loans, and consolidation loans. Generally, these loans have repayment periods of between five and ten years, with the exception of consolidation loans, and obligate the borrower to pay interest at an annually reset variable rate that has a cap or, on older loans, a stated fixed rate. In each case, pursuant to a government established formula, the yield to holders of FFELP loans is subsidized on the borrowers' behalf by the federal government to provide a market rate of return. The federal subsidy is referred to as the Special Allowance Payment ("SAP"), which is paid to holders of FFELP loans whenever the average of all of the 91-day Treasury bill auctions in a calendar quarter, plus a spread of between 2.50 and 3.50 percentage points depending on the loan's origination date and whether the loan is in repayment status, exceeds the rate of interest which the borrower is obligated to pay. In low interest rate environments, the rate which the borrower is obligated to pay may exceed the rate determined by the special allowance formula. In those instances, no SAP is paid and the interest rate paid on the loan by the borrower becomes, in effect, a floor on an otherwise variable rate asset. When this happens, the difference between the interest rate paid by the borrower and the rate determined by the SAP formula is referred to as "student loan floor revenue" or "floor revenue".

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The Omnibus Budget Reconciliation Act of 1993 changed the FFELP in a number of ways that lowered the profitability of FFELP loans for all participants and established the Federal Direct Student Loan Program ("FDSLP") under which the federal government lends directly to students. FFELP changes include risk-sharing on defaulted loans, reductions in the special allowance rate, a 105 basis point annual rebate fee on consolidation loans, a 50 basis point origination fee on Stafford and PLUS loans and a 30 basis point annual offset fee (the "Offset Fee") unique to the GSE on student loans purchased and held on or after August 10, 1993.

The following Management's Discussion and Analysis contains forward-looking statements and information that are based on management's current expectations as of the date of this document. When used herein, the words "anticipate," "believe," "estimate" and "expect" and similar expressions, as they relate to the Company's management, are intended to identify forward-looking statements. Such forward-looking statements are subject to risks, uncertainties, assumptions and other factors that may cause the actual results of the Company to be materially different from those reflected in such forward-looking statements. Such factors include, among others, changes in the terms of student loans and the educational credit marketplace arising from the implementation of applicable laws and regulations and from changes in such laws and regulations, changes in the demand for educational financing or in financing preferences of educational institutions, students and their families and changes in the general interest rate environment and in the securitization markets for student loans.

Selected Financial Data
Condensed Statements of Income
<TABLE>
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Increase (Decrease)

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	Years ended December 31,			1997 vs. 1996		1996 vs. 1995	
	1997	1996	1995	$	%	$	%
Net interest income.............................	$ 758	$ 866	$ 901	$ (108)	(13)%	$(35)	(4)%
Gains on sales of student loans................	280	49	-	231	472	49	100
Servicing and securitization revenue...........	151	58	1	93	162	57	100
Other income....................................	70	40	49	30	75	(9)	(18)
Operating expenses..............................	494	405	439	89	22	(34)	(8)
Federal income taxes............................	243	183	141	60	32	42	30
Minority interest in net earnings of subsidiary................................	11	11	11	-	-	-	-
Income before premiums on debt extinguished.....	511	414	360	97	24	54	15
Premiums on debt extinguished, net of tax.......	(3)	(5)	(5)	2	32	-	2

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NET INCOME.......................................	$ 508	$ 409	$ 355	$ 99	24%	$ 54	15%
	======	======	======	=======	===	====	===
BASIC EARNINGS PER COMMON SHARE.................	$ 2.80	$ 2.10	$ 1.51	$ .70	33%	$.59	39%
	======	======	======	=======	===	====	===
DILUTED EARNINGS PER COMMON SHARE...............	$ 2.78	$ 2.09	$ 1.51	$ .69	33%	$.58	38%
	======	======	======	=======	===	====	===
Dividends per common share......................	$ .52	$ .47	$ .43	$ .05	11%	$.04	9%
	======	======	======	=======	===	====	===
CORE EARNINGS...................................	$ 487	$ 381	$ 350	$ 106	28%	$ 31	9%
	======	======	======	=======	===	====	===

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CORE EARNINGS

Core earnings are defined as the Company's net income less the after-tax effect of floor revenues. Management believes that this measure, which is not recognized under generally accepted accounting principles ("GAAP"), assists in understanding the Company's earnings before the effects of student loan floor revenues which, to the extent they are not hedged by floor revenue contracts, are largely outside of the Company's control. Management believes that core earnings as defined, while not necessarily comparable to other companies' use of similar terminology, provide for meaningful period-to-period comparisons as a basis for analyzing trends in the Company's core student loan operations.

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Securitization Program

During each of the years ended December 31, 1997 and 1996, the Company completed four securitization transactions, in which a total of $9.4 billion and $6.0 billion of student loans, respectively, were sold to a special purpose finance subsidiary and by the subsidiary to trusts that issued asset-backed securities to fund the student loans to term. The Company accounts for its securitization transactions in accordance with Statement of Financial Accounting Standards No. 125 "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities" ("SFAS 125"), which establishes the accounting for certain financial asset transfers including securitization transactions. Under SFAS 125, the Company records a gain on sale equal to the present value of the expected net cash flows from the trust to the Company over the life of the portfolio sold. The resultant asset (the "Interest Residual") consists of the net present value of the excess of the interest earned on the portfolio of student loans sold to the trust less the interest paid on the asset-backed securities, servicing and administration fees, the estimated cost of borrower benefit programs, expected losses from risk-sharing on defaulted loans and other student loan related costs. In addition, the Company continues to service the loans in the trusts for a fee and earns that fee over the life of the portfolio. When the contract servicing fee is greater than current market servicing rates, the present value of such excess servicing fees is recognized as a servicing asset and included in the gain on sale.

GAINS ON SALES OF STUDENT LOANS

In 1997, the Company recorded securitization gains of $280 million pre-tax, an increase of $231 million over the gains recorded in 1996. The increase is mainly due to the securitization of $3.4 billion more student loans in 1997 than in 1996. In the third quarter of 1997, the Company resolved litigation over whether the Offset Fee applied to securitized student loans. As a result, in the third quarter of 1997 the Company reversed a pre-tax $97 million reserve (of which $57 million was accrued prior to 1997 and $40 million was accrued in the first half of 1997) for Offset Fees accrued previously on securitized student loans. If the Company had recorded gains at the time of each securitization transaction without reserving for the Offset Fee, then the 1997 gains would have been pre-tax $226 million versus $95 million in 1996, or, as a percentage of the securitized portfolios, 2.39 percent in 1997 versus 1.58 percent in 1996. The increase in gains as a percentage of the securitized portfolio was due mainly to higher average borrower indebtedness and the longer average life of the portfolios of loans securitized in 1997 versus 1996. Gains on securitizations were immaterial in 1995. Gains on future securitizations will continue to vary depending on the size and the loan characteristics of the loan portfolios securitized and the funding costs prevailing in the securitization debt markets.

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Other Related Events and Information

Legislative Developments

The Higher Education Act provides that the special allowance for student loans made on or after July 1, 1998 will be based on the U.S. Treasury security with comparable maturity plus 1.0 percent for Stafford and Unsubsidized Stafford loans, and 2.1 percent for PLUS loans. The Secretary of Education has not adopted regulations specifying the U.S. Treasury security on which these interest rates will be based or how often the special allowance rate will reset. Depending on the specifics of the regulations, these changes could adversely impact the FFELP market and the Company's business, because of the uncertain availability and costs of funding to support this new type of instrument. On February 25, 1998, the U.S. Treasury Department released a report on "The Financial Viability of the Government Guaranteed Student Loan Program." The report concludes that the new special allowance formula scheduled to take effect for student loans on July 1, 1998 would reduce lenders' net return to below acceptable levels and would create inefficiencies. The Treasury report also suggests that the current T-bill based formula provides lenders with a pre-tax rate of return that exceeds a "reasonable range of target rates." Management believes that the report's costs and profitability assumptions underlying the rate of return analysis are flawed. Concurrent with the release of the report, the Clinton Administration called for a reinstatement of the 91-day T-bill index and an 80 basis point reduction in the special allowance for both in-school and repayment loans. Management believes the administration's proposal, as with the currently scheduled rate change, would result in uneconomic returns for lenders. Such a reduction would have a material adverse impact on the Company and its earnings. Management expects Congress to consider this issue in March of 1998. It is uncertain whether Congress will enact any changes to the law and whether such changes would be in line with the Administration's proposal.

Loan Consolidation Program

On November 13, 1997, President Clinton signed into law the Emergency Student Loan Consolidation Act of 1997, which made significant changes to the FFELP loan consolidation program. These changes include: (1) providing that FDSLP loans are eligible to be included in a FFELP consolidation loan; (2) changing the borrower interest rate on new consolidation loans (previously a fixed rate based on the weighted average of the loans consolidated, rounded up to the nearest whole percent) to the annually variable rate applicable to Stafford loans (the bond equivalent rate at the last auction in May of 91-day Treasury bills, plus 3.10 percent, capped at 8.25 percent); (3) providing that the portion of a consolidated loan that is comprised of subsidized loans retains its subsidy benefits during periods of deferment; and (4) establishing prohibitions against various forms of discrimination in the making of consolidation loans. All of these provisions, with the exception of item 4, expire on September 30, 1998. The emergency legislation did not alter the 105 basis points annual fee payable by the holder of a consolidation loan or the 50 basis points origination fee charged to lenders when a consolidation loan is issued.

Following enactment of this legislation, the Company announced that, effective as of November 13, 1997, it had suspended its loan consolidation program (marketed as the SMART LoanSM program). The new legislation made it difficult for the Company to participate in the FFELP consolidation loan program for profitability reasons. The Company does, however, strongly endorse the principle of the legislation that allows FDSLP and FFELP borrowers to consolidate their loans under either program and plans to continue to press for changes that will enable the Company to once again participate in the FFELP consolidation loan program.

Administration's FY 1999 Budget Proposal

On February 3, 1998, President Clinton submitted his Fiscal Year 1999 budget proposal to Congress. As in past years, the President has included a number of provisions designed to reduce the costs of the FFELP program and to provide savings necessary to offset the costs of reducing borrower paid loan origination fees, which he proposed to eliminate completely for Subsidized Stafford loans by July 1, 2003. The President proposed to provide FFELP borrowers extended repayment options that are available in the FDSLP, and to allow for a multi-year promissory note for both the FFELP and FDSLP to streamline the application process for serial borrowers. Of specific interest to lenders are proposals to reset the interest rate for special allowance payments on new loans on an annual basis, versus the current weekly reset, require lenders to limit interest capitalization on Unsubsidized Stafford Loans to the beginning of repayment (versus current policy which permits capitalization to occur as frequently as quarterly while the borrower is in school) and to require FFELP lenders that offer benefits involving the partial or complete payment of borrower origination fees to offer those benefits to all borrowers they serve. Special allowance payments made on loans funded via tax-exempt obligations would also be reduced. In Higher Education Act reauthorization proposals submitted subsequent to submission of the budget, the Administration proposed to reduce the interest rate on Stafford loans while the borrower is in school to the 10-year Treasury Note rate without any spread to that rate. The President called again for a total restructuring of the guaranty agencies, including recalling more than $1 billion in remaining guarantor reserve funds. The President's plan for guaranty agencies calls for converting them to a "fee for service" model, reducing amounts they currently retain on amounts collected from defaulted borrowers from 27 percent to 18.5 percent and replacing payments for pre-claims assistance with a performance-based formula. All these proposals may be considered by Congress as it deliberates on this budget and addresses the reauthorization of the Higher Education Act.

Year 2000 Issue

The "Year 2000 issue" refers to a wide variety of potential computer program processing and functionality issues that may arise from the inability of computer programs to properly process date-sensitive information relating to the Year 2000, years thereafter and to a lesser degree the Year 1999. During 1996, the Company commenced a Year 2000 compliance project to assess and remediate its internal software and hardware systems to avoid or mitigate Year 2000 problems and to evaluate potential Year 2000 problems that may arise from entities with which the Company interacts. The Company is assessing its internal software and hardware, and is in the process of replacing or modifying those systems. The Company does not believe that the costs of its internal program will be material to any single year.

The Company has surveyed its third party service providers and business partners and is currently reviewing these surveys to determine the level of compliance and the potential impact of noncompliance. There can be no assurance that the computer systems of other companies or counterparties on which the Company relies will be compliant on a timely basis, or that a failure to resolve Year 2000 issues by another party, or a remediation or conversion that is incompatible with the Company's computer systems, will not have a material adverse effect on the Company.

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Notes to Consolidated Financial Statements
(Dollars in thousands, except per share amounts)

1. Organization and Privatization

SLM Holding Corporation ("SLM Holding") was formed on February 3, 1997 as a wholly owned subsidiary of the Student Loan Marketing Association (the "GSE"). On August 7, 1997, pursuant to the Student Loan Marketing Association Reorganization Act of 1996 (the "Privatization Act") and approval by shareholders of an agreement and plan of reorganization, the GSE was reorganized into a subsidiary of SLM Holding (the "Reorganization"). SLM Holding is a holding company that operates through a number of subsidiaries including the GSE. References herein to the "Company" refer to the GSE and its subsidiaries for periods prior to the Reorganization and to SLM Holding and its subsidiaries for periods after the Reorganization.

Under the terms of the Reorganization each outstanding share of common stock, par value $.20 per share, of the GSE was converted into one share of common stock, par value $.20 per share of SLM Holding. The GSE transferred all employees to non-GSE subsidiaries on August 7, 1997 and also transferred certain assets, including stock in certain subsidiaries, to SLM Holding or one of its non-GSE subsidiaries on December 31, 1997. This transfer of the subsidiaries and assets and the related exchange of stock was accounted for at historical cost similar to a pooling of interests and therefore all prior period financial statements and related disclosures presented have been restated as if the Reorganization took place at the beginning of such periods.

The GSE was chartered by Congress to provide liquidity for originators of student loans made under federally sponsored student loan programs and otherwise to support the credit needs of students and educational institutions. The GSE is predominantly engaged in the purchase of student loans insured under federally sponsored programs. The GSE also makes secured loans (warehousing advances) to providers of education credit, and provides financing to educational institutions for their physical plant and equipment (academic facilities financings).

Privatization

The Privatization Act provides that the GSE may continue to issue new debt obligations maturing on or before September 30, 2008. The legislation further provides that the legal status and attributes of the GSE's debt obligations, including Securities and Exchange Commission ("SEC") registration and state tax exemptions, will be fully preserved until their respective maturities. Such debt obligations will remain GSE debt obligations, whether such obligations were outstanding at the time of, or issued subsequent to, the Reorganization. The obligations of SLM Holding do not have GSE status. Beginning in fiscal 1997, and until the GSE is dissolved, the GSE also must reimburse the U.S. Treasury Department up to $800,000 annually (subject to adjustment based on the Consumer Price Index) for its reasonable costs and expenses of carrying out its supervisory duties under the Privatization Act.

As required by the Privatization Act the GSE paid $5 million to the District of Columbia Financial Responsibility and Management Assistance Authority (the "D.C. Financial Control Board") for the use of the name "Sallie Mae," and SLM Holding issued to the D.C. Financial Control Board warrants to purchase 1,942,553 shares of SLM Holding Common Stock at a price of $20.69 per share after consideration of the Company's 7-for-2 stock split.

The GSE will wind down its operations and dissolve on or before September 30, 2008. Any GSE debt obligations outstanding at the date of such dissolution will be defeased through creation of a fully collateralized trust, consisting of U.S. government or agency obligations with cash flows matching the interest and principal obligations of the defeased debt. The Privatization Act further requires that the GSE's outstanding adjustable rate cumulative preferred stock be redeemed on September 30, 2008 or at such earlier time when the GSE is dissolved. Also upon the GSE's dissolution, all of its remaining assets will transfer to the Company.

SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10-K

(Mark One)

[X] Annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the fiscal year ended December 31, 2000 or
[_] Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the transition period from to

Commission file numbers 001-13251

USA EDUCATION, INC.
(formerly SLM Holding Corporation)
(Exact Name of Registrant as Specified in Its Charter)

Delaware	52-2013874
(State of Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)
11600 Sallie Mae Drive, Reston, Virginia	20193
(Address of Principal Executive Offices)	(Zip Code)

(703) 810 3000
(Registrant's Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Act:
Common Stock, par value $.20 per share.

6.97% Cumulative Redeemable Preferred Stock, Series A, par value $.20 per share

Securities registered pursuant to Section 12(g) of the Act:
None.

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes [X] No [_]

The aggregate market value of voting stock held by non-affiliates of the registrant as of February 28, 2001 was approximately $11,697,238,179 (based on closing sale price of $72.53 per share as reported for the New York Stock Exchange--Composite Transactions).

On that date, there were 162,881,521 shares of Common Stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Proxy Statement relating to the registrant's Annual Meeting of Shareholders scheduled to be held May 10, 2001 are incorporated by reference into Part III of this Report.

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [X]

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This Report contains forward-looking statements and information that are based on management's current expectations as of the date of this document. When used in this report, the words "anticipate," "believe," "estimate," "intend" and "expect" and similar expressions are intended to identify forward-looking statements. These forward-looking statements are subject to risks, uncertainties, assumptions and other factors that may cause the actual results to be materially different from those reflected in such forward-looking statements. These factors include, among others, changes in the terms of student loans and the educational credit marketplace arising from the implementation of applicable laws and regulations and from changes in these laws and regulations, which may reduce the volume, average term and costs of yields on student loans under the Federal Family Education Loan Program ("FFELP") or result in loans being originated or refinanced under non-FFELP programs or may affect the terms upon which banks and others agree to sell FFELP loans to the Company. The Company could also be affected by changes in the demand for educational financing or in financing preferences of lenders, educational institutions, students and their families; and changes in the general interest rate environment and in the securitization markets for education loans, which may increase the costs or limit the availability of financings necessary to initiate, purchase or carry education loans.

PART I.

Item 1. Business

We believe that the industry data on the FFELP and the Federal Direct Loan Program (the "FDLP") contained in this report are based on reliable sources and represent the best available information for these purposes, including published and unpublished U.S. Department of Education ("DOE") data and industry publications.

GENERAL

USA Education, Inc. (formerly SLM Holding Corporation), a Delaware Corporation (the "Company"), is the nation's largest private source of funding and servicing support for higher education loans for students and their parents. The Company provides a wide range of financial services, processing capabilities and information technology to meet the needs of educational institutions, lenders, students, and guarantee agencies. It was formed in 1997 in connection with the reorganization (the "Reorganization") of the Student Loan Marketing Association, a government-sponsored enterprise (the "GSE") that had been established by an act of Congress in 1972. The Student Loan Marketing Association Reorganization Act of 1996 (the "Privatization Act") required the GSE to propose to shareholders a plan of reorganization under which their share ownership would convert to an equivalent share ownership in a state-chartered holding company that would own all of the stock of the GSE. Under the Privatization Act, the Reorganization was approved by the GSE's shareholders on July 31, 1997 and effected on August 7, 1997. The Privatization Act requires the GSE to transfer its business to the Company and dissolve on or before September 30, 2008. During the period prior to the dissolution of the GSE (the "Wind-Down Period"), the GSE is subject to various limitations on its business and activities. See "--Operations during the Wind-Down Period" and

"Regulation--The Privatization Act."

As of December 31, 2000, the Company's managed portfolio of federally insured student loans totaled approximately $64.5 billion (including loans owned and loans securitized). The Company also had commitments to purchase $16.4 billion of additional student loans as of December 31, 2000. While the Company continues to be the leading purchaser of student loans, its business has expanded since the creation of the GSE in 1972, reflecting changes in both the education sector and the financial markets.

Primarily a provider of education credit, the Company serves a diverse range of clients, including approximately 5,500 educational and financial institutions and state agencies. The Company serves in excess of 7 million borrowers through its ownership and management of approximately $67.5 billion in student loans.

On July 31, 2000, the Company acquired the guarantee servicing, student loan servicing and secondary market operations of USA Group, Inc. ("USA Group"). With this acquisition, the Company has broadened its

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offering of education related services to include servicing and administrative support for guarantee agencies. In addition, the acquisition has opened new channels and affiliations for loan volume growth and has further diversified the Company's sources of revenue. Prior to the USA Group acquisition, the Company derived substantially all of its income from interest earnings or "spread income" from its portfolio of student loans. As a result of this acquisition, the Company anticipates that "fee income" from its guarantor servicing and third party servicing operations will account for an increasingly larger portion of its income.

The Company believes that it has achieved its leadership position in the education finance industry due to its focus on customer relationships, value-added products and services, superior loan servicing capabilities and a sound financial management strategy. In recognition of the increasingly important role that college and university administrators play in the student loan process, the Company's primary marketing focus is the school financial aid office where its strategy is to deliver simple, flexible and cost-effective products and services to schools and students. This strategy, combined with superior servicing and technology capabilities, has helped the Company build valuable partnerships with schools, lenders, guarantee agencies and others.

INDUSTRY OVERVIEW

The higher education credit marketplace consists of a number of programs that are structured to provide affordable financing to students and their families to fund education. The great majority of student loans are made to finance post-secondary education under federally sponsored programs, although many students and parents secure additional education credit through private student loan programs. The primary federally sponsored student loan programs are the FFELP and the FDLP. The largest student loan program, formerly called the Guaranteed Student Loan Program and now known as the FFELP, was created in 1965 to ensure low-cost access by families to a full range of post-secondary educational institutions. In 1972, to encourage further bank participation in the Guaranteed Student Loan Program, Congress established the GSE as a for-profit, stockholder-owned national secondary market for student loans. Under loan programs sponsored by FFELP, banks and other lenders that satisfy statutory eligibility requirements can originate student loans at below-market interest rates as a result of the federal government's guarantee and its payment to lenders of market-based adjustments (special allowance payments).

The FFELP industry is currently administered through a network of approximately 3,500 lending institutions and 4,740 educational institutions. Thirty-six state-sponsored or non-profit guarantee agencies are responsible for guaranteeing the loans on behalf of the DOE. In addition to the Company, a number of non-profit entities, banks and other financial intermediaries operate as secondary markets for student loans.

The Higher Education Act of 1965, as amended (the "Higher Education Act"), is reauthorized by Congress approximately every six years. The Higher Education Act was last reauthorized on October 7, 1998 in the form of the Higher Education Amendments of 1998 (the "Reauthorization Legislation"), legislation that lowered both the borrower interest rate on Stafford loans and the lender's rate after special allowance payments. The provisions of the FFELP are also subject to revision from time to time by Congress.

The second largest federally sponsored student loan program and the Company's primary competitor is the FDLP. In 1993, Congress expanded a previously established pilot program into the FDLP, which is administered and marketed to schools by the DOE. Established as an alternative to the private sector-based FFELP, the FDLP accounted for approximately one-third of all new federally sponsored student loans issued in academic year 1999-2000. Under the FDLP, the federal government contracts with third parties for loan administration and collection services while financing its lending activity through U.S. Treasury borrowings. Loans offered through the FDLP are generally the same as those offered through FFELP.

Under FFELP, there are four primary lending products that fund access to education. The Company's student loan purchases have primarily involved these loan types. They include:

- subsidized Stafford loans,

- unsubsidized Stafford loans,

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- Parental Loans to Undergraduate Students (PLUS) and

- consolidations loans.

Payment of principal and interest are guaranteed (98 percent to 100 percent, depending on loan origination date) against default by the borrower as well as in other circumstances. In addition, the holder of a federal student loan is entitled to receive interest subsidy payments and, in certain cases, special allowance payments from the Department. (See "Appendix A" for a detailed discussion of the FFELP and FDLP).

Demand for student loans has risen substantially over the last several years. Higher education tuition cost and fee increases continue to exceed the inflation rate. Over half of all full-time college students today depend on some form of borrowing, compared to just over 35 percent in 1985. In addition, federal legislation enacted in late 1992 expanded loan limits and borrower eligibility. All of these factors contributed to annual federally sponsored student loan volume growing by approximately 56 percent from the 1994 federal fiscal year to the 2000 federal fiscal year. In dollars, the FDLP and FFELP student loan volume grew from approximately $24 billion as of September 30, 1994 to approximately $37.5 billion as of September 30, 2000. According to DOE projections, demand for student loans will continue to grow. Total FDLP and FFELP student loan volume is projected to reach $70 billion in the 2009 federal fiscal year. The Company believes that lender participation in the FFELP is relatively concentrated, with an estimated 90 percent of loans being originated by the top 100 participants during the federal fiscal year ended September 30, 2000.

While the FDLP grew at a much higher rate during the first four years of the program (FY94-FY97), the FDLP has lost market share during the past three years. During the federal fiscal year 2000, FFELP student loans represented 68 percent, or $25.7 billion, of the total student loan market. FFELP student loans represented only 66 percent of the total student loan market in the federal fiscal year 1997.

PRODUCTS AND SERVICES

Over the past decade, a number of developments have significantly changed the student loan industry. The developments--primarily, the continued reduction in the legislated asset spread, the encroachment of the FDLP, the concentration of participating lenders, the advent of student loan securitization and the Company's 1997 reorganization--led the Company to reassess its bank-oriented loan purchase strategy. As a result, the Company changed the focus of its marketing efforts to the college campus, specifically the financial aid offices. Management believes that the keys to the success of this campus-centered marketing strategy are:

- strategic lender partnerships and loan origination,

- an expanded sales force offering a broad range of focused brands,

- premium loan delivery and technology solutions,

- private credit solutions and

- borrower benefits.

As of December 31, 2000, the Company's managed portfolio of federally insured student loans totaled $64.5 billion, including $62.4 billion of FFELP loans (including loans owned and loans securitized) and $2.1 billion of Health Education Assistance Programs loans ("HEAL").

Strategic Lending Partnerships and Loan Origination. Through dedicated lender relationships and direct origination, the Company intends to build its control channel--loans originated and serviced on the Company's servicing platform that are committed for sale to or owned from inception by the Company. The loans acquired or originated in this fashion are more profitable to the Company as they are acquired at a lower average premium and have a longer average life and lower servicing costs. Loan volume disbursed on the Company's control channel totaled $7.3 billion in 2000 and $5.1 billion in 1999, a 42 percent increase year-over-year.

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Excluding business acquisitions, the Company's control channel volume was approximately 61 percent of its total purchase volume in 2000 and 52 percent of its purchase volume in 1999. In 2000, the primary contributors to the Company's control channel volume were its joint venture with Chase Manhattan Bank and its strategic alliance with Bank One, which resulted from the Company's USA Group acquisition. During the federal fiscal year ending September 30, 2000, Chase and Bank One were the second and third largest originators, respectively, of federally insured student loans.

Although a significant portion of the Company's volume comes from commercial banks, the Company also purchases student loans from other eligible FFELP lenders, including savings and loan associations, mutual savings banks, credit unions and insurance companies, educational institutions, and state and private non-profit loan originating and secondary market agencies.

The Company entered into its joint venture with Chase Manhattan Bank (the "Joint Venture") in 1994 and restructured it in 1998 such that the Company now purchases all loans originated by Chase. The Company also purchased the $5 billion of loans that were co-owned in the Joint Venture at the time of the restructuring. Since the Company now owns the loans, it no longer receives servicing fees from the Joint Venture that were previously included in other income.

On December 31, 1999, USA Group entered into an agreement to establish an innovative strategic alliance with Bank One, one of the nation's largest education loan originators. This alliance was transferred to the Company as part of the Company's acquisition of USA Group's business operations. Under this alliance, Education One Group, Inc., which is now an indirect wholly owned subsidiary of the Company, is the sole, limited purpose agent of Bank One operating exclusively to market and sell Bank One's education loans. Under the Company's renewable, multi-year agreement, which strengthened and expanded its then existing arrangement with Bank One, the Company's affiliates will service and purchase a significant share of Bank One's annual new loan volume.

The Company also purchases student loans through standard purchase commitment contracts. During 2000, the Company purchased approximately $1.4 billion of student loans through such arrangements. The Company enters into commitment contracts with lenders to purchase loans up to a specified aggregate principal amount over the term of the contract, which is generally three years. Under all commitment contracts (including control channel commitments), lenders have the right, and in most cases the obligation, to sell to the Company the loans they own over a specified period of time at a purchase price that is based on certain loan characteristics. Unlike control channel commitments, the loans under standard commitments are not originated on a Sallie Mae servicing platform.

The Company supplements its commitment purchases with spot purchases. In a spot purchase, the Company competes with other market participants to purchase a portfolio of eligible loans from a selling holder. Excluding business acquisitions, the Company made approximately 8 percent and 1 percent of its purchases of educational loans through spot purchases in 2000 and 1999, respectively. In general, spot purchase volume is more costly than volume purchased under commitment contracts.

In 1998, the Company began to originate a nominal amount of FFELP loans through its wholly owned subsidiary, SLM Education Loan Corp. As of December 31, 2000, the Company originated $306 million of FFELP loans. In order to accelerate its loan origination efforts, the Company completed two strategic acquisitions: Nellie Mae in 1999 and Student Loan Funding Resources Inc. ("SLFR") in 2000. At the time of purchase, Nellie Mae had a $2.6 billion student loan portfolio. SLFR owned a $3.0 billion portfolio and originated approximately $25 million in student loans during their fiscal year ended June 30, 2000. The Company expects that its origination activity will increase as more schools adopt the Laureate, and NetWizard(TM) student loan delivery systems discussed below. The Company will continue to explore acquiring additional student loan volume and origination capabilities through strategic acquisitions of student loan businesses.

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Expanding Sales Force. Beginning in 1997 and in conjunction with its joint venture with Chase Manhattan Bank, the Company began to expand its sales force and solidify its primary lending relationships. By 2001, the Company had increased its sales force five-fold to approximately 220 individuals representing brands such as Sallie Mae, Nellie Mae, SLFR, SLM Financial and Education One. Management believes this sales coverage, together with the service level and product set provided by the Company, will maximize the potential that the Company or one of its brands will be placed on a college or university's preferred lender list.

Premium Loan Delivery Systems and Technology. In concert with its focus to drive volume to its control channel through the financial aid office, the Company launched Laureate, its Internet-based student loan delivery system, for the 1999-2000 academic year. In addition, with the acquisition of the business operations of USA Group, the Company now offers NetWizard, an alternative Internet-based student loan delivery system. These systems provide real-time data linkage among schools, borrowers, lenders and guarantors. With these systems, a student loan process that previously required multiple sessions over several days can now be completed in one on-line session. As of December 31, 2000, 238 schools were using Laureate. Through Laureate, the Company has processed over $1.5 billion in FFELP loans since its July 1999 launch. In addition, as of December 31, 2000, 1,125 schools were using NetWizard for a variety of loan delivery and financial aid services.

In conjunction with commitment contracts, the Company frequently provides selling institutions with loan origination and interim servicing support in the form of ExportSS(R) through one of the Company's loan servicing centers. The Company also offers selling institutions operational support in the form of PortSS(R) an automated loan administration system for the lender's use at its own offices before loan sale. In 2000 and 1999, 82 percent and 79 percent, respectively, of the Company's purchase commitment volume came from users of ExportSS and PortSS. Through TransportSSSM, the Company also offers commitment clients the ability to originate loans and then transfer them to the Company for servicing. PortSS, ExportSS and TransportSS provide the Company and the lender assurance that loans will be efficiently administered by the Company and that borrowers will have access to the Company's repayment options and benefits. While USA Group did not offer a similar set of products and services, it sought to foster efficient loan administration through arrangements with "alliance lenders," who generally are entitled to the full complement of USA Group's products and services. The largest such alliance lender is Bank One, which accounted for approximately 80 percent of the business secured through the alliance lender program. See "--Strategic Lending Partnerships and Loan Originations."

Private Credit Solutions. To meet the full range of needs of financial aid directors and students, the Company offers a wide complement of privately insured funding alternatives to fill the gap between the price of admission and federal financial aid. In the spring of 1996, the Company introduced the Signature EducationSM Loan Program. Signature StudentSM Loans are available to students at most four-year colleges and universities to supplement their federal loans. Freshmen and non-creditworthy students are required to have a cosigner. Students may borrow as much as the costs of attendance minus other financial aid they are eligible to receive. With the Signature Select(R) Loan, participating colleges tailor loan features to reflect the needs of their individual campuses and provide default coverage in exchange for additional program flexibility. Signature Loans are insured by the Company through its HEMAR Insurance Corporation of America (HICA) subsidiary. The Company also purchases loans originated under various other HICA-insured loan programs, including particularly the private loan affinity programs MEDLOANSSM, LAWLOANSSM, and MBALOANSSM. These three loan programs accounted for $150 million in private loans and $365 million in FFELP loans during the academic year 1999-2000.

Under agreements with the Company, lenders originated approximately $325 million in loan volume in Signature private loans and $4.3 billion in loan volume in FFELP loans at schools where the Company did Signature volume in the academic year 1999-2000. The majority of this volume represents loans made to borrowers with creditworthy cosigners.

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Beginning in 1999, SLM Financial, a wholly owned subsidiary of the Company, substantially expanded the Company's private credit product line, focusing on career training, lifelong learning and K-12 education. With the creation of SLM Financial, the Company began offering Career Training LoanSM directly to borrowers and through partnerships with higher education associations, colleges and universities, technical and trade schools and other adult learning centers. This loan is available to borrowers enrolled in career training courses or a distance learning school; attending a two-year or four-year proprietary school; or attending a four-year college less than half-time. In addition, the Company made available its K-12 Family Education LoanSM to parents and other family members of children attending private K-12 schools. Under this loan program, families can borrow up to the entire cost of education including additional money for education-related expenses such as the purchase of a computer or musical instrument. SLM Financial also offers mortgages, home equity and other secured and unsecured consumer loans. All SLM Financial loans are underwritten and priced based upon standardized consumer credit scoring criteria. For the year ended December 31, 2000, SLM Financial originated $656 million in loans of which 63 percent was education related. The Company is also sourcing private credit loans on campus through the Nellie Mae, Student Loan Funding and USA Group acquired brands.

Borrower Benefits. To satisfy customer preferences and compete more effectively in the student loan marketplace, the Company has developed a comprehensive set of loan programs and services for borrowers, including numerous loan restructuring and repayment options and programs that encourage and reward good repayment habits. The Company also provides counseling and information programs (including a worldwide web site) that help borrowers and reinforce relationships with college and university customers and lender partners.

Under the Company's Great Rewards(R) Program, certain FFELP borrowers who make their first 48 scheduled monthly payments on time receive a two percentage-point interest rate reduction for the remaining term of the loan. Other programs credit students an amount equal to part of the loan origination fees they pay and modestly reduce interest costs for use of automatic debit accounts. The Company also provides financial aid administrators at colleges and universities with innovative products and services that simplify the lending process, including electronic funds transfer services and loan information and management software that enables college application data to be transferred electronically between program participants.

The Flex Repay Account, the Company's newest graduated repayment option, allows students who are having difficulty making repayments to extend loan repayment to make their payments more affordable while minimizing total loan costs in comparison to loan consolidation.

The Company also offers eligible borrowers a program for consolidation of eligible insured loans into a single new insured loan with a term of 10 to 30 years. As of December 31, 2000, the Company owned approximately $11.7 billion of such consolidation loans, known as SMART LOAN(R) Accounts. Following enactment of the Emergency Student Loan Consolidation Act in November 1997, which made significant changes to the FFELP loan consolidation program, the Company temporarily suspended its loan consolidation program. As a result of the Reauthorization Legislation, the Company began to offer student loan borrowers the SMART LOAN consolidation program again in the fourth quarter of 1998.

LOAN SERVICING

In 1980, the Company began servicing its own student loan portfolio in order to better control costs and manage risks. In late 1995, in connection with the commencement of its securitization program, the Company transferred its servicing operations to Sallie Mae Servicing Corporation ("SMSC"). At the end of 2000, the Company merged USA Group's servicing operations with and into SMSC. Through SMSC, the Company is now the nation's largest servicer of FFELP loans, and management believes that the Company is recognized as the premier service quality and technology provider in the student loan industry. The Company believes that its processing capability and service excellence are integral to its school-based growth strategy. As of December 31, 2000, the Company serviced approximately $66.7 billion of FFELP loans, including approximately

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$23.9 billion of loans owned by the GSE and its affiliates, $24.7 billion owned by 18 securitization trusts sponsored by the GSE, $5.0 billion owned by 10 securitization trusts sponsored by Secondary Market Services, a wholly owned subsidiary of the GSE, and $13.1 billion of loans owned by other parties. As of December 31, 2000, the Company also serviced approximately $5.8 billion in non-FFELP loans including approximately $2.0 billion in HEAL loans and $3.8 billion in private loans.

The Company currently has five loan servicing centers, located in Arizona, Florida, Indiana, Pennsylvania and Texas. This geographic coverage, together with total systems integration among centers, facilitates operations and customer service.

The DOE and the various guarantee agencies prescribe rules and regulations that govern the servicing of federally insured student loans. The Company's origination and servicing systems, internal procedures and highly trained staff support compliance with these regulations, and are designed to promote asset integrity and provide superior service to borrowers.

GUARANTOR SERVICING

As a result of its acquisition of the business operations of USA Group, the Company now provides a full complement of administrative support for loan guarantors, ranging from loan origination and account maintenance to default prevention and post-default collections. The Company provides administrative support to USA Funds, the nation's largest guarantor of education loans and the designated guarantor in Alaska, Arizona, Hawaii and the Pacific Islands, Indiana, Kansas, Maryland, Mississippi, Nevada and Wyoming. In addition, the Company has guarantor servicing contracts with guarantors serving 12 other states.

During 2000, the Company processed $6.8 billion and $2.2 billion in education loans for USA Funds and the Company's other guarantor servicing customers, respectively. All of these customers use the Company's EAGLE(TM) guarantee system, a state-of-the-art, multi-platform operating system that tracks FFELP loan origination and guarantee activities that the Company administers on behalf of its customers.

The Company has two primary contracts with USA Funds: a guarantee services agreement under which the Company provides comprehensive outsourcing of guarantee operations functions including, among other things, guarantee processing, portfolio management, loan disbursement services, claim review and debt collections; and a default aversion agreement under which the Company provides all default aversion activities required under the FFELP as well as certain mutually agreed upon special default reduction activities. Each contract has an initial term of five years, beginning October 1, 1999. On each October 1 thereafter, beginning on October 1, 2000, the term of each contract will be automatically increased by an additional year unless a contractually specified prior notice is given by either party.

The Company currently operates its post-default collections from a collections center located in Nevada and performs other guarantee servicing operations from the loan servicing operations located in Indiana.

FINANCING/SECURITIZATION

The GSE obtains funds for its operations primarily from the sale of debt securities in the domestic and overseas capital markets, and through public offerings and private placements of U.S. dollar denominated and foreign currency denominated debt of varying maturities and interest rate characteristics. GSE debt securities are currently rated at the highest credit rating level by Moody's Investors Service, Inc. ("Moody's") and Standard & Poor's Credit Market Services, a division of The McGraw-Hill Companies, Inc. ("S&P").

The GSE uses interest rate and currency exchange agreements (collateralized where appropriate), U.S. Treasury securities, interest rate futures contracts and other hedging techniques to reduce its exposure to interest rate and currency fluctuations arising out of its financing activities and to match the characteristics of its assets and liabilities. The GSE has also issued preferred stock to obtain funds, including preferred stock held by the Company. Under the Privatization Act, the GSE may issue debt with maturity dates through

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September 30, 2008 to fund student loan and other permitted asset purchases. Upon the GSE's dissolution in accordance with the Privatization Act, the GSE must transfer any remaining GSE obligations into a defeasance trust for the benefit of the holders of such obligations together with cash or full faith and credit obligations of the United States, or an agency thereof, in amounts sufficient, as determined by the Secretary of the Treasury, to pay the principal and interest on the deposited obligations. If the GSE has insufficient assets to fully fund such GSE debt, the Company must transfer sufficient assets to the trust to account for this shortfall. The Privatization Act requires that upon the dissolution of the GSE on or before September 30, 2008, the GSE shall repurchase or redeem or make proper provisions for repurchase or redemption of the GSE's outstanding preferred stock.

Since late 1995, the Company has further diversified its funding sources, independent of its GSE borrower status, by securitizing a portion of its student loan assets. Securitization is an off-balance sheet funding mechanism that the Company effects through the sale of portfolios of student loans by the GSE to SLM Funding Corporation, a bankruptcy-remote, special-purpose, wholly owned subsidiary of the GSE. SLM Funding Corporation, in turn sells the student loans to an independent owner trust that issues securities to fund the purchase of the student loans. The securitization trusts typically issue several classes of debt securities rated at the highest investment grade level. The GSE has not guaranteed such debt securities and has no obligation to ensure their repayment. Because the securities issued by the trusts through securitization are not GSE securities, the Company has been and in the future expects to be able to fund its student loans to term through securitization, even for those assets with final maturities that extend beyond the Wind-Down Period. The DOE has concurred with the Company's position that a 30 basis point per annum offset fee imposed on loans held by the GSE does not apply to securitized loans. The Company anticipates that securitization will remain a primary student loan funding mechanism for the Company when it begins to conduct student loan purchase activity through a non-GSE subsidiary.

In addition to the foregoing, the Company obtains funding through a commercial paper program. In the fourth quarter of 1999, the Company established a $1 billion commercial paper program. This program is supported by a $600 million 364-day revolving credit agreement, which the Company renewed in the fourth quarter of 2000, and a $400 million five-year revolving credit agreement. Prior to the establishment of this commercial paper program, the Company secured credit ratings of A1, P1 and F1+ on its short term debt and A, A3 and A+ on its long term debt from S&P, Moody's and Fitch IBCA, Inc., respectively. In addition, the Company issued a total of $1 billion of medium term notes in the fourth quarter of 2000 and the first quarter of 2001.

OPERATIONS DURING THE WIND-DOWN PERIOD

Privatization enables the Company to commence new business activities without regard to restrictions in the GSE's charter. During the Wind-Down Period, the GSE generally is prohibited from conducting new business except in connection with student loan purchases through September 30, 2007 or with other outstanding contractual commitments, and from issuing new debt obligations that mature beyond September 30, 2008. The GSE has transferred personnel and certain assets to the Company or other non-GSE affiliates. Student loans, warehousing advances and other program-related or financial assets (such as portfolio investments, letters of credit, swap agreements and forward purchase commitments) have not been transferred and are generally not expected to be transferred until the Wind-Down Period is close to completion. Neither the Company nor any of its non-GSE affiliates may make secondary market purchases of FFELP loans for so long as the GSE is actively acquiring insured student loans. During the Wind-Down Period, GSE operations will be managed under arm's-length service agreements between the GSE and one or more of its non-GSE affiliates. The Privatization Act also provides certain restrictions on intercompany relations between the GSE and its affiliates during the Wind-Down Period.

COMPETITION

The Company's largest competitor is the Federal Direct Loan Program. Based on DOE reports, the Company estimates that total student loan originations for the federal fiscal years 1999-2000 and 1998-99

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were $36.1 billion and $33.7 billion, respectively, of which FDLP originations represented approximately 29 percent and 32 percent, respectively. The DOE projects that FDLP originations will represent about one-third of total student loan originations in the 2000-01 federal fiscal year.

The Company also faces competition on a national basis from several large commercial banks and non-profit secondary market agencies and on a state or local basis from smaller banks and state-based secondary markets. The availability of securitization for student loan assets also fostered competition from new and established market participants. Based on the most recent information from the DOE and management estimates, at the end of fiscal year 1999, the GSE's share (in dollars) of outstanding FFELP loans was 35 percent, while banks and other financial institutions held 42 percent and state secondary market participants held 23 percent. Management believes that market share in the FFELP industry has been a function of school and student desire for borrower benefits and superior customer service as more fully described above. See "PRODUCTS AND SERVICES--Strategic Lending Partners and Loan Origination."

The DOE offers FFELP borrowers the opportunity to refinance or consolidate their FFELP loans into FDLP loans if the borrowers also have a FDLP loan or upon certification that the holder of their FFELP loans does not offer an income-sensitive payment plan acceptable to the borrower. During 2000 and 1999, approximately $519 million and $755 million, respectively, of the GSE's FFELP loans were consolidated into the FDLP. In early 1995, the Company began offering an income-sensitive payment plan. The FDLP, however, also provides an income-contingent option not available under the FFELP program that may be more attractive to certain borrowers. Under this repayment option, the government will ultimately forgive student loan debt after 25 years.

REGULATION

As a government-sponsored enterprise, the GSE is organized under federal law and its government charter restricts its operations. Although privatization permits the Company's private activities to expand through non-GSE subsidiaries, the GSE's operations continue to be subject to broad federal regulation during the Wind-Down Period.

The Privatization Act

The Privatization Act established the basic framework for the Reorganization and imposes certain restrictions on the operations of the Company and its subsidiaries during the Wind-Down Period. The Privatization Act amends the GSE's charter to require certain enhanced regulatory oversight of the GSE to ensure its financial safety and soundness. See "--GSE Regulation."

Reorganization. The Privatization Act required the GSE to propose to shareholders a plan of reorganization under which their share ownership in the GSE would be automatically converted to an equivalent share ownership in a state-chartered holding company that would own all of the common stock of the GSE. On July 31, 1997, the GSE's shareholders approved the Reorganization in fulfillment of this provision. The Privatization Act requires that the GSE be liquidated on or before September 30, 2008, upon which its federal charter will be rescinded. During the Wind-Down Period, the Company will remain a passive entity that supports the operations of the GSE and its other non-GSE subsidiaries, and any new business activities will be conducted through such subsidiaries.

The Privatization Act requires all personnel and certain assets to be transferred to non-GSE subsidiaries of the Company in connection with the Reorganization, including the transfer of the GSE's interest in certain subsidiaries. The GSE's student loans and related contracts, warehousing advances and other program-related or financial assets (such as portfolio investments, letters of credit, swap agreements and forward purchase

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commitments) and any non-material assets that the GSE Board determines to be necessary for or appropriate to continued GSE operations, may be retained by the GSE. Employees of the GSE were transferred to the Management Company at the effective time of the Reorganization. Employees who were employed by non-GSE subsidiaries of the GSE before the Reorganization continue to be employed by such subsidiaries.

During the Wind-Down Period, the GSE is restricted in the new business activities it may undertake. The GSE may continue to purchase student loans only through September 30, 2007, and warehousing advance, letter of credit and standby bond purchase activity by the GSE is limited to takedowns on contractual financing and guarantee commitments in place at the effective time of the Reorganization. In addition, the Company and its non-GSE subsidiaries may not make secondary market purchases of FFELP loans for so long as the GSE is actively acquiring insured student loans.

In certain circumstances, the GSE will continue to serve as a lender of last resort and will provide secondary market support for the FFELP upon the request of the Secretary of Education. If and to the extent that the GSE performs such functions, however, it will not be required to pay a statutorily imposed 30 basis point offset fee on such loans. The GSE may transfer assets and declare dividends, from time to time, if it maintains a minimum capital ratio of at least 2.25 percent. In the event that the GSE does not maintain the required minimum capital ratio, the Company is required to supplement the GSE's capital to achieve such minimum capital ratio.

The GSE's debt obligations, including debt obligations that were outstanding at the time of the Reorganization, continue to be outstanding obligations of the GSE and will not be transferred to any other entity (except in connection with the defeasance trust described below). See "--GSE Dissolution After Reorganization." The Privatization Act provides that the Reorganization does not modify the attributes accorded to the debt obligations of the GSE by the GSE's charter. During the Wind-Down Period, the GSE can continue to issue debt in the government agency market to finance student loans and other permissible asset purchases. The maturity date of such issuances, however, may not extend beyond September 30, 2008, the GSE's final dissolution date. This restriction does not apply to debt issued to finance any lender of last resort or secondary market purchase activity requested by the Secretary of Education. The Privatization Act is clear that the Reorganization (and the subsequent transfer of any remaining GSE debt to the defeasance trust described below) will not modify the legal status of any GSE debt obligations, whether such obligations existed at the time of Reorganization or are subsequently issued.

Oversight Authority. During the Wind-Down Period, the Secretary of the Treasury has extended oversight authority to monitor the activities of the GSE and, in certain cases, the Company and its non-GSE subsidiaries to the extent that the activities of such entities are reasonably likely to have a material impact on the financial condition of the GSE. The U.S. Department of the Treasury has established the Office of Sallie Mae Oversight to perform these functions. During this period, the Secretary of the Treasury may require that the GSE submit periodic reports regarding any potentially material financial risk of its associated persons and its procedures for monitoring and controlling such risk. The Company is expressly prohibited from transferring ownership of the GSE or causing the GSE to file bankruptcy without the approval of the Secretary of the Treasury and the Secretary of Education. The Secretary of Education and the Secretary of the Treasury have express authority to request that the Attorney General bring an action, or may bring an action under the direction and control of the Attorney General, in the United States District Court for the District of Columbia, for the enforcement of any provision of the GSE's safety and soundness requirements or the requirements of the Privatization Act in general.

Restrictions on Intercompany Relations. The Privatization Act restricts intercompany relations between the GSE and its affiliates during the Wind-Down Period. Specified corporate formalities must be followed to ensure that the separate corporate identities of the GSE and its affiliates are maintained. Specifically, the Privatization Act provides that the GSE must not extend credit to, nor guarantee any debt obligations of, the Company or its subsidiaries. The Privatization Act also provides that (i) the funds and assets of the GSE must

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at all times be maintained separately from the funds and assets of the Company and its subsidiaries, (ii) the GSE must maintain books and records that clearly reflect the assets and liabilities of the GSE, separate from the assets and liabilities of the Company or its subsidiaries, (iii) the GSE must maintain a corporate office that is physically separate from any office of the Company and its subsidiaries, (iv) no director of the GSE who is appointed by the President may serve as a director of the Company and (v) at least one officer of the GSE must be an officer solely of the GSE.

Furthermore, the Privatization Act mandates that transactions between the GSE and the Company, including any loan servicing arrangements, shall be on terms no less favorable to the GSE than the GSE could obtain from an unrelated third party, and any amounts collected on behalf of the GSE by the Company under a servicing contract or other arrangement between the GSE and the Company shall be immediately deposited by the Company to an account under the sole control of the GSE.

Limitations on Company Activities. During the Wind-Down Period, the Company must remain a passive entity that holds the stock of its subsidiaries and provides funding and management support to such subsidiaries. The Privatization Act contemplates that until the GSE is dissolved, the Company's business activities will be conducted through subsidiaries. However, the Privatization Act extends to the Company and its subsidiaries the GSE's "eligible lender" status for loan consolidation and secondary market purchases.

The Company and its non-GSE subsidiaries generally may not begin to make secondary market purchases of FFELP student loans for so long as the GSE is actively acquiring insured student loans. Subject to the foregoing, the Company may elect, at any time, to transfer new student loan purchase activity from the GSE to one of its non-GSE subsidiaries. In addition, the Company is permitted to and, in the third quarter of 1998, began to originate FFELP loans. See "Business--Products and Services--Originations." Under the Higher Education Act, loans acquired after August 10, 1993 and held by the GSE are subject to a 30 basis point per annum "offset fee." The offset fee does not apply to securitized loans or to loans held or securitized by the Company or its non-GSE subsidiaries.

Although the GSE may not finance the activities of the Company's non-GSE subsidiaries, it may, subject to its minimum capital requirements, dividend retained earnings and surplus capital to the Company, which in turn may use such amounts to support its non-GSE subsidiaries. The Privatization Act further directs that, unless and until distributed as dividends by the GSE, under no circumstances shall the assets of the GSE be available or used to pay claims or debts of or incurred by the Company.

In exchange for the payment of $5 million to the District of Columbia Financial Responsibility and Management Assistance Authority (the "Control Board"), the Company and its other subsidiaries may continue to use the name "Sallie Mae," but not the name "Student Loan Marketing Association," as part of their legal names or as a trademark or service mark. Interim disclosure requirements in connection with securities offerings and promotional materials are required to avoid marketplace confusion regarding the separateness of the GSE and its affiliated entities. During the Wind-Down Period and until one year after repayment of all outstanding GSE debt, the "Sallie Mae" name may not be used by any Company unit that issues debt obligations or other securities to any person or entity other than the Company or its subsidiaries. In addition, the Privatization Act required the Company to issue certain warrants to purchase the Company's Common Stock (the "Warrants") to the Control Board. These provisions of the Privatization Act were part of the terms negotiated with the Administration and Congress in conjunction with the GSE's privatization. The Company issued the Warrants on August 7, 1997.

GSE Dissolution after Reorganization. The Privatization Act provides that the GSE will liquidate and dissolve on September 30, 2008, unless an earlier dissolution is requested by the GSE and the Secretary of Education makes no finding that the GSE continues to be needed as a lender of last resort under the GSE charter or to purchase loans under certain agreements with the Secretary of Education. In connection with such dissolution, the GSE must transfer any remaining GSE obligations into a defeasance trust for the benefit of the

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holders of such obligations, along with cash or full faith and credit obligations of the United States, or an agency thereof, in amounts sufficient, as determined by the Secretary of the Treasury, to pay the principal and interest on the deposited obligations. As of December 31, 2000, the GSE had $1.4 billion in current carrying value of debt obligations outstanding with maturities after September 30, 2008. If the GSE has insufficient assets to fund fully such GSE debt obligations outstanding at the time of dissolution, the Company must transfer sufficient assets to the trust to account for this shortfall. The Privatization Act also requires that on the dissolution date, the GSE shall repurchase or redeem, or make proper provisions for the repurchase or redemption of, any outstanding shares of preferred stock, of which the GSE has issued Series A and B Adjustable Rate Cumulative Preferred Stock. The Series A Preferred Stock is carried at its liquidation value of $50.00 per share for a total of $214 million and pays a variable dividend that has been at its minimum rate of 5 percent per annum for the last several years. The Series B Preferred Stock is carried at its liquidation value of $500,000 per share for a total of $100 million and pays a variable dividend that is equal to three-month London Interbank Offered Rate ("LIBOR") plus one percent per annum divided by 1.377. Upon dissolution, the GSE charter will terminate, and any assets that the GSE continues to hold after establishment of the trust or that remain in the trust after full payment of the remaining obligations of the GSE assumed by the trust will be transferred to the Company or its affiliates, as determined by the Company's Board of Directors.

GSE Regulation

The GSE's structure and the scope of its business activities are set forth in its charter. The charter, which is subject to review and change by Congress, sets forth certain restrictions on the GSE's business and financing activities and charges the federal government with certain oversight responsibilities with respect to these activities. The GSE's charter grants the GSE certain exemptions from federal and state laws. The GSE's charter's primary regulatory restrictions and exemptions, including certain provisions added by the Privatization Act, are summarized as follows:

1.Seven members of the GSE's 21-member Board of Directors are appointed by the President of the United States. The other 14 members are elected by the Company as the holder of the GSE's Common Stock. The Chairman of the Board is designated by the President of the United States from among the Board's 21 members.

2.Debt obligations issued by the GSE are exempt from state taxation to the same extent as U.S. government obligations. The GSE is exempt from all taxation by any state or by any county, municipality or local taxing authority except with respect to real property taxes. The GSE is not exempt from federal corporate income taxes.

3.All stock and other securities of the GSE are deemed to be exempt securities under the laws administered by the Securities and Exchange Commission (the "Commission") to the same extent as obligations of the United States.

4.The GSE may conduct its business without regard to any qualification or similar statute in any state of the United States, including the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States (although the scope of the GSE's business is generally limited by its federal charter).

5.The issuance of GSE debt obligations must be approved by the Secretary of the Treasury.

6.The GSE is required to have its financial statements examined annually by independent certified public accountants and to submit a report of the examination to the Secretary of the Treasury. The Department of the Treasury is also authorized to conduct audits of the GSE and to otherwise monitor the GSE's financial condition. The GSE is required to submit annual reports of its operations and activities to the President of the United States and Congress. The GSE must pay up to $800,000 per year to the Department of the Treasury to cover the costs of its oversight.

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7.The GSE is subject to certain "safety and soundness" regulations, including the requirement that the GSE maintain a 2.25 percent capital adequacy ratio. The GSE may pay dividends only upon certification that, at the time of a dividend declaration and after giving effect to the payment of such dividend, the capital adequacy ratio is satisfied.

8.The Secretary of Education and the Secretary of the Treasury have certain enforcement powers under the GSE's charter.

9.A 30 basis point annual offset fee, unique to the GSE, is payable to the Secretary of Education on student loans purchased and held by the GSE on or after August 10, 1993.

10.In certain circumstances, at the request of the Secretary of Education, the GSE is required to act as a lender of last resort to make FFELP loans when other private lenders are not available. Such loans are not subject to the 30 basis point offset fee on loans held by the GSE.

Other Regulation

Under the Higher Education Act, the GSE is an "eligible lender" for purposes only of purchasing and holding loans made by other lenders and making consolidation and lender of last resort loans. Like other participants in insured student loan programs, the Company is subject, from time to time, to review of its student loan operations by the General Accounting Office, the DOE and certain guarantee agencies. The laws relating to insured student loan programs are subject to revision from time to time and changes to such laws are beyond the Company's control. In addition, SMSC, as a servicer of student loans, is subject to certain DOE regulations regarding financial responsibility and administrative capability that govern all third party servicers of insured student loans. Failure to satisfy such standards may result in the loss of the government guarantee of FFELP loans. Also, in connection with its guarantor servicing operations, the Company must comply with, on behalf of its guarantor servicing customers, certain DOE regulations that govern guarantor activities as well as agreements for reimbursement between the Secretary of Education and the Company's guarantor servicing customers. Failure to comply with these regulations or the provisions of these agreements may result in the termination of the Secretary of Education's reimbursement obligation. HICA, a South Dakota stock insurance company, is subject to the ongoing regulatory authority of the South Dakota Division of Insurance and that of comparable governmental agencies in six other states.

Non-Discrimination and Limitations on Affiliation with Depository Institutions

The Privatization Act also amended the Higher Education Act to provide that the GSE and any successor entity (including the Company) functioning as a secondary market for federally insured student loans may not engage, directly or indirectly, in any pattern or practice that results in a denial of a borrower's access to insured loans because of the borrower's race, sex, color, religion, national origin, age, disability status, income, attendance at a particular institution, length of a borrower's educational program or the borrower's academic year at an eligible institution.

The Omnibus Appropriations Act of 1998, signed into law by the President on October 21, 1998, contains several provisions that amend the Federal Deposit Insurance Act. These provisions provide an exception to the prohibition on affiliations between government-sponsored entities and depository institutions contained in the Federal Deposit Insurance Act. This exception allows the Company to become affiliated with a depository institution upon certain conditions and with the approval of the Secretary of the Treasury. Among the conditions are: the dissolution of the GSE cannot be adversely affected by the affiliation; the dissolution of the GSE must occur within two years after the affiliation is consummated subject to the ability of the Secretary to extend such deadline for up to two one-year periods; and the GSE must be separate and distinct from the affiliated depository institution and cannot extend credit, provide credit enhancement or purchase any obligation of the depository institution.

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Item 2. Properties

The following table lists the principal facilities owned by the Company:

<TABLE>
<CAPTION>

Location	Function	Approximate Square Feet
<S>	<C>	<C>
Reston, VA	Operations/Headquarters	395,000
Fishers, IN	Loan Servicing Data Center	450,000
Indianapolis, IN	Former USA Group Headquarters	330,000
Wilkes Barre, PA	Loan Servicing Center	135,000
Killeen, TX	Loan Servicing Center	133,000
Lynn Haven, FL	Loan Servicing Center	133,000
Castleton, IN	Loan Servicing Center	100,000

</TABLE>

The Company leases approximately 7,000 square feet of office space in Washington, D.C. for its government relations group. The GSE leases approximately 115,600 square feet of office space in Washington, D.C. for its former headquarters. The Company has entered into subleases through the term of these leases, which expire in 2001, and other arrangements to terminate the GSE's obligations under these leases. In addition, the Company leases approximately 71,000 square feet for its collections center in Summerlin, Nevada and 65,000 square feet of space for its inbound/outbound call center in Chandler, Arizona. With the exception of the Pennsylvania loan servicing center, none of the Company's facilities is encumbered by a mortgage. The Company believes that its headquarters and loan servicing centers are generally adequate to meet its long-term student loan and new business goals. The Company's principal office is located in owned space at 11600 Sallie Mae Drive, Reston, Virginia, 20193.

As of December 31, 2000, the Company employed 6,712 employees nationwide.

Item 3. Legal Proceedings.

The Company, together with a number of other FFELP industry participants, filed a lawsuit challenging the Department of Education's interpretation of and non-compliance with provisions in the Higher Education Act governing origination fees and repayment incentives on loans made under the FDLP, as well as interest rates for Direct Consolidation Loans. The lawsuit, which was filed November 3, 2000 in the United States District Court for the District of Columbia, alleges that the Department's interpretations of and non-compliance with these statutory provisions are contrary to the statute's unambiguous text, and are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and violate both the HEA and the Administrative Procedure Act. The Company and the other plaintiffs have filed a motion for summary judgment. The Department of Education must file its cross-motion for summary judgment and opposition to the plaintiff's motion on or before April 6, 2001.

Item 4. Submission of Matters to a Vote of Security-Holders

Nothing to report.

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PART II.

Item 5. Market for Registrant's Common Equity and Related Stockholder Matters

The Company's Common Stock is listed and traded on the New York Stock Exchange under the symbol SLM. The number of holders of record of the Company's Common Stock as of March 12, 2001 was approximately 612. The following table sets forth the high and low sales prices for the Company's Common Stock for each full quarterly period within the two most recent fiscal years.

COMMON STOCK PRICES

<TABLE>
<CAPTION>

<S>	<C>	1st Quarter <C>	2nd Quarter <C>	3rd Quarter <C>	4th Quarter <C>
1999	High	48 15/16	47 5/16	48 13/16	53 5/8
	Low	40 1/8	40 3/8	42 7/8	41 11/16
2000	High	43 7/8	38 11/16	48 15/16	68 1/4
	Low	28 1/2	27 13/16	36 7/8	44 7/8

</TABLE>

The Company paid regular quarterly dividends of $.15 per share on the Common Stock for the first three quarters of 1999, $.16 for the fourth quarter of 1999 and the first three quarters of 2000 and $.175 for the fourth quarter of 2000 and the first quarter of 2001.

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Item 6. Selected Financial Data

Selected Financial Data 1996-2000
(Dollars in millions, except per share amounts)

The following table sets forth selected financial and other operating information of the Company. The selected financial data in the table is derived from the consolidated financial statements of the Company. The data should be read in conjunction with the consolidated financial statements, related notes, and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in the Company's Form 10-K to the Securities and Exchange Commission.

	2000	1999	1998	1997	1996
Operating Data:					
Net interest income	$ 642	$ 694	$ 651	$ 781	$ 894
Net income	465	501	501	508	409
Basic earnings per common share	2.84	3.11	2.99	2.80	2.10
Diluted earnings per common share	2.76	3.06	2.95	2.78	2.09
Dividends per common share	.66	.61	.57	.52	.47
Return on stockholders' equity	49%	78%	81%	65%	50%
Net interest margin	1.52	1.85	1.93	1.80	1.96
Return on assets	1.06	1.28	1.41	1.12	.86
Dividend payout ratio	24	20	19	19	22
Average equity/average assets	2.34	1.59	1.65	1.64	1.66
Balance Sheet Data:					
Student loans	$37,647	$33,809	$28,283	$29,443	$33,696
Total assets	48,792	44,025	37,210	39,832	47,572
Total borrowings	45,375	41,988	35,399	37,717	45,124
Stockholders' equity	1,415	841	654	675	834
Book value per common share	7.62	4.29	3.98	3.89	4.44
Other Data:					
Securitized student loans outstanding	$29,868	$19,467	$18,059	$14,262	$ 6,329
Pro-forma "Core Cash Basis" Results (1):					
Net interest income	$ 1,039	$ 927	$ 892	$ 937	$ 939
Net income	492	405	381	384	367
Diluted earnings per common share	2.93	2.48	2.24	2.10	1.88
Net interest margin	1.53%	1.68%	1.76%	1.75%	1.89%
Return on assets	.71	.71	.72	.70	.71

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(1)The pro-forma results present the Company's results of operations under the assumption that the securitization transactions are financings and that the securitized student loans were not sold. As such, no gain on sale or subsequent servicing and securitization revenue is recognized. Instead, the earnings of the student loans in the trusts and related financing costs are reflected over the life of the underlying pool of loans. The effect of floor income, certain one-time gains on sales of investment securities and student loans, certain one-time, non-recurring expenses incurred in 1997, a one-time integration charge related to the July 2000 acquisition of USA Group, and the amortization of goodwill from acquisitions are also excluded from net income. Management refers to these pro-forma results as "core cash basis" results. Management monitors the periodic "core cash basis" results of the Company's managed student loan portfolio and believes that they assist in a better understanding of the Company's student loan business.

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Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

MANAGEMENT'S DISCUSSION AND ANALYSIS OF
FINANCIAL CONDITION AND RESULTS OF OPERATIONS
Years ended December 31, 1998-2000
(Dollars in millions, except per share amounts)

OVERVIEW

SLM Holding Corporation ("SLM Holding") was formed on February 3, 1997, as a wholly owned subsidiary of the Student Loan Marketing Association (the "GSE"). On August 7, 1997, in accordance with the Student Loan Marketing Association Reorganization Act of 1996 (the "Privatization Act") and approval by shareholders of an agreement and plan of reorganization, the GSE was reorganized into a subsidiary of SLM Holding (the "Reorganization"). Effective as of July 31, 2000, SLM Holding Corporation was renamed USA Education, Inc. upon the completion of the acquisition of the guarantee servicing, student loan servicing and secondary market operations of USA Group, Inc. ("USA Group"). USA Education, Inc. is a holding company that operates through a number of subsidiaries including the GSE. References herein to the "Company" refer to the GSE and its subsidiaries for periods prior to the Reorganization and to USA Education, Inc. and its subsidiaries for periods after the Reorganization.

The Company is the largest source of financing and servicing for education loans in the United States primarily through its participation in the Federal Family Education Loan Program ("FFELP"), formerly the Guaranteed Student Loan Program. The Company's products and services include student loan purchases and commitments to purchase student loans, student loan servicing, as well as operational support to originators of student loans and to post-secondary education institutions, guarantors and other education-related financial services. The Company also originates, purchases, holds and services unguaranteed private loans.

The following Management's Discussion and Analysis contains forward-looking statements and information that are based on management's current expectations as of the date of this document. Discussions that utilize the words "intends," "anticipate," "believe," "estimate" and "expect" and similar expressions, as they relate to the Company's management, are intended to identify forward-looking statements. Such forward-looking statements are subject to risks, uncertainties, assumptions and other factors that may cause the actual results of the Company to be materially different from those reflected in such forward-looking statements. Such factors include, among others, changes in the terms of student loans and the educational credit marketplace arising from the implementation of applicable laws and regulations and from changes in such laws and regulations; which may reduce the volume, average term and costs of yields on student loans under the FFELP or result in loans being originated or refinanced under non-FFELP programs or may affect the terms upon which banks and others agree to sell FFELP loans to the Company. The Company could also be affected by changes in the demand for educational financing and consumer lending or in financing preferences of lenders, educational institutions, students and their families; and changes in the general interest rate environment and in the securitization markets for education loans, which may increase the costs or limit the availability of financings necessary to initiate, purchase or carry education loans.

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EARNINGS SUMMARY

The Company's "core cash basis" net income was $492 million for the year ended December 31, 2000 ($2.93 diluted earnings per share) versus $405 million ($2.48 diluted earnings per share) for the year ended December 31, 1999. (See "Pro-forma Statements of Income" for a detailed discussion of "core cash basis" net income.) During 2000, the Company acquired a record $20.6 billion of managed student loans including $1.4 billion of purchased student loans and $5.2 billion of managed student loans acquired from USA Group, and $3.1 billion of student loans acquired from Student Loan Funding Resources ("SLFR").

Student loan acquisitions increased the average balance of managed loans outstanding by $9.7 billion for the year ending December 31, 2000. The higher average student loan balance, partially offset by the lower average Special Allowance Payment ("SAP") spreads (see "Student Loan Spread Analysis"), increased after-tax earnings by $107 million. In addition, after-tax fee income increased by $128 million, principally due to the additional guarantor and third party servicing fee income attributable to the acquisition of USA Group. (See "Other Income.") These increases to "core cash basis" net income were partially offset by the after-tax increase to operating expenses of $103 million principally due to the acquisitions of USA Group and SLFR, which closed on July 31, 2000 and July 7, 2000, respectively.

For the year ended December 31, 2000, the Company's net income calculated in accordance with generally accepted accounting principles ("GAAP") was $465 million ($2.76 diluted earnings per share), versus net income of $501 million ($3.06 diluted earnings per share) in 1999. The decrease in 2000 reported net income from 1999 is attributable to several significant factors. While the Company increased the on-balance sheet average balance of student loans by $1.6 billion, the higher interest rate environment in 2000 decreased after-tax floor income by $41 million. Other factors include a $148 million after-tax increase in operating expense including a $32 million after-tax integration charge, both principally due to the acquisitions of USA Group and SLFR, and an $18 million after-tax decrease in gains on sales of student loans. The Company did not complete any such sales in 2000. These decreases to net income were only partially offset by the increases in after-tax gain on securitizations and servicing and securitization revenue of $37 million and $5 million, respectively. After-tax fee income increased net income by $128 million, principally due to the additional guarantor and third party servicing fee income attributable to the acquisition of USA Group.

During 2000, the Company repurchased 7 million common shares (or 4 percent of its outstanding shares) at a cost of $321 million, and issued approximately 10 million shares as part of the USA Group purchase and a net 5 million shares from benefit plans. As a result, common shares outstanding increased to 164 million at December 31, 2000 from 158 million at December 31, 1999.

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Securitization Program

In 2000, the Company completed four securitization transactions in which a total of $8.8 billion of student loans were sold to a special purpose finance subsidiary and by that subsidiary to trusts that issued asset-backed securities to fund the student loans to term. In addition, the Company acquired the securitization revenue streams of $5.2 billion of student loans previously securitized by USA Group. This increased the percentage of average securitized loans to average managed student loans to 43 percent for 2000 versus 35 percent for 1999. In 1999, the Company completed three securitization transactions in which a total of $4.0 billion of student loans were securitized and in 1998, the Company completed two securitization transactions in which a total of $6.0 billion of student loans were securitized. The Company accounts for its securitization transactions in accordance with Statement of Financial Accounting Standards No. 125 "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities" ("SFAS 125"), which establishes the accounting for certain financial asset transfers, including securitization transactions. Under SFAS 125, the Company records a gain on sale based upon the difference between the cost basis of the assets sold and the fair value of the assets received. At the same time, the Company records an asset (the "Interest Residual") equal to the present value of the expected net cash flows from the trust to the Company over the life of the portfolio

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securitized. The gain is reduced by write-offs of certain assets related to the portfolio sold and by transaction costs. In addition, the Company continues to service the loans in the trusts, through SMSC, for a fee, and earns that fee over the life of the portfolio. When the contract servicing fee is greater than current market servicing rates, the present value of such excess servicing fees is recognized as a servicing asset and amortized over the life of the portfolio serviced.

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(c)Exhibits

<TABLE>

<C>	<S>
*2	Agreement and Plan of Reorganization by and among the Student Loan Marketing Association, SLM Holding Corporation, and Sallie Mae Merger Company
**3.1	Amended and Restated Certificate of Incorporation of the Registrant
+3.2	By-Laws of the Registrant
**4	Warrant Certificate No. W-2, dated as of August 7, 1997
*10.1	Board of Directors Restricted Stock Plan
*10.2	Board of Directors Stock Option Plan
*10.3	Deferred Compensation Plan for Directors
*10.4	Incentive Performance Plan
*10.5	Stock Compensation Plan
*10.6	1993-1998 Stock Option Plan
*10.7	Supplemental Pension Plan
*10.8	Supplemental Employees' Thrift & Savings Plan (Sallie Mae 401(K) Supplemental Savings Plan)
***10.9	Directors Stock Plan
***10.10	Management Incentive Plan
*21	Subsidiaries of the Registrant
+23	Consent of Arthur Andersen LLP

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*Incorporated by reference to the correspondingly numbered exhibits to the Registrant's Registration Statement on Form S-4, as amended (File No. 333-21217)
**Incorporated by reference to the correspondingly numbered exhibits to the Registrant's Registration on Form S-1 (File No. 333-38391)
***Incorporated by reference to the Registrant's Definitive Proxy Statement on Schedule 14A, as filed with the Securities and Exchange Commission on April 10, 1998 (File No. 001-13251)
+Filed with the Securities and Exchange Commission with this Form 10-K

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: March 29, 2001

USA EDUCATION, INC.

By: /s/ Albert L. Lord
Albert L. Lord
Chief Executive Officer

Pursuant to the requirement of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities indicated on the dates indicated.

<TABLE>
<CAPTION>

Signature	Title	Date
<S>	<C>	<C>
/s/ Albert L. Lord Albert L. Lord	Chief Executive Officer (Principal Executive Officer) and Director	March 29, 2001
/s/ John F. Remondi John F. Remondi	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	March 29, 2001
/s/ Edward A. Fox Edward A. Fox	Chairman of the Board of Directors	March 29, 2001
/s/ Charles L. Daley Charles L. Daley	Director	March 29, 2001
/s/ William M. Diefenderfer, III William M. Diefenderfer, III	Director	March 29, 2001
/s/ Thomas J. Fitzpatrick Thomas J. Fitzpatrick	Director	March 29, 2001

/s/ Diane Suitt Gilleland		March 29, 2001
Diane Suitt Gilleland	Director	
/s/ Earl A. Goode		March 29, 2001
Earl A. Goode	Director	
/s/ Ann Torre Grant		March 29, 2001
Ann Torre Grant	Director	
/s/ Ronald F. Hunt		March 29, 2001
Ronald F. Hunt	Director	

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<S>	<C>	<C>
/s/ Benjamin J. Lambert, III		March 29, 2001
Benjamin J. Lambert, III	Director	
/s/ James C. Lintzenich		March 29, 2001
James C. Lintzenich	Director	
/s/ Barry A. Munitz		March 29, 2001
Barry A. Munitz	Director	
/s/ A. Alexander Porter, Jr.		March 29, 2001
A. Alexander Porter, Jr.	Director	
/s/ Wolfgang Schoellkopf		March 29, 2001
Wolfgang Schoellkopf	Director	
/s/ Steven L. Shapiro		March 29, 2001
Steven L. Shapiro	Director	
/s/ Barry L. Williams		March 29, 2001
Barry L. Williams	Director	

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USA EDUCATION, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(Dollars in thousands, except per share amounts)

1. Organization and Privatization

USA Education, Inc., formerly SLM Holding Corporation ("SLM Holding"), was formed on February 3, 1997 as a wholly owned subsidiary of the Student Loan Marketing Association (the "GSE"). On August 7, 1997, pursuant to the Student Loan Marketing Association Reorganization Act of 1996 (the "Privatization Act") and approval by shareholders of an agreement and plan of reorganization, the GSE was reorganized into a subsidiary of SLM Holding (the "Reorganization"). Effective as of July 31, 2000, SLM Holding Corporation was renamed USA Education, Inc. upon the completion of the acquisition of the guarantee servicing, student loan servicing and secondary market operations of USA Group, Inc. ("USA Group"). USA Education, Inc. is a holding company that operates through a number of subsidiaries including the GSE. References herein to the "Company" refer to the GSE and its subsidiaries for periods prior to the Reorganization and to USA Education, Inc. ("USA Education") and its subsidiaries for periods after the Reorganization.

Under the terms of the Reorganization each outstanding share of common stock, par value $.20 per share, of the GSE was converted into one share of common stock, par value $.20 per share, of USA Education, Inc. The GSE transferred all employees to non-GSE subsidiaries on August 7, 1997 and also transferred certain assets, including stock in certain subsidiaries, to USA Education, Inc. or one of its non-GSE subsidiaries on December 31, 1997. This transfer of the subsidiaries and assets and the related exchange of stock was accounted for at historical cost similar to a pooling of interests and therefore all prior period financial statements and related disclosures presented have been restated as if the Reorganization took place at the beginning of such periods.

The GSE was chartered by Congress to provide liquidity for originators of student loans made under federally sponsored student loan programs and otherwise to support the credit needs of students and educational institutions. The GSE is predominantly engaged in the purchase of student loans insured under federally sponsored programs. The GSE also makes secured loans (warehousing advances) to providers of education credit, and provides financing to educational institutions for their physical plant and equipment (academic facilities financings).

The Privatization Act provides that the GSE may continue to issue new debt obligations maturing on or before September 30, 2008. The legislation further provides that the legal status and attributes of the GSE's debt obligations, including the Commission registration and state tax exemptions, will be fully preserved until their respective maturities. Such debt obligations will remain GSE debt obligations, whether such obligations were outstanding at the time of, or issued subsequent to, the Reorganization. The obligations of USA Education do not have GSE status. The GSE will wind down its operations and dissolve on or before September 30, 2008. Any GSE debt obligations outstanding at the date of such dissolution will be defeased through creation of a fully collateralized trust, consisting of U.S. government or agency obligations with cash flows matching the interest and principal obligations of the defeased debt. The Privatization Act further requires that the GSE's outstanding adjustable rate cumulative preferred stock be redeemed on September 30, 2008 or at such earlier time when the GSE is dissolved. Also upon the GSE's dissolution, all of its remaining assets will transfer to the Company.

The Omnibus Appropriations Act of 1998, signed into law by the President on October 21, 1998, amends the Federal Deposit Insurance Act by, among other things, providing an exception to its current prohibition on affiliations between government-sponsored entities and depository institutions. This exception allows USA Education, Inc. to become affiliated with a depository institution upon satisfaction of certain conditions and with the approval of the Secretary of the Treasury. Among the conditions are that: the dissolution of the GSE cannot be adversely affected by the affiliation; the dissolution of the GSE must occur within two years after the affiliation is consummated subject to the ability of the Secretary to extend such deadline for up to two one-year

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USA EDUCATION, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)
(Dollars in thousands, except per share amounts)

1. Organization and Privatization (Continued)

periods; and the GSE must be separate and distinct from the affiliated depository institution and cannot extend credit, provide credit enhancement or purchase any obligation of the depository institution.

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Section 1087-2. Student Loan Marketing Association

(a) Purpose

The Congress hereby declares that it is the purpose of this section (1) to establish a private corporation which will be financed by private capital and which will serve as a secondary market and warehousing facility for student loans, including loans which are insured by the Secretary under this part or by a guaranty agency, and which will provide liquidity for student loan investments; (2) in order to facilitate secured transactions involving student loans, to provide for perfection of security interests in student loans either through the taking of possession or by notice filing; and (3) to assure nationwide the establishment of adequate loan insurance programs for students, to provide for an additional program of loan insurance to be covered by agreements with the Secretary.

(b) Establishment

(1) In general

There is hereby created a body corporate to be known as the Student Loan Marketing Association (hereinafter referred to as the ''Association''). The Association shall have succession until dissolved. It shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue and jurisdiction in civil actions, to be a resident and citizen thereof. Offices may be established by the Association in such other place or places as it may deem necessary or appropriate for the conduct of its business.

(2) Exemption from State and local taxes

The Association, including its franchise, capital, reserves, surplus, mortgages, or other security holdings, and income shall be exempt from all taxation now or hereafter imposed by any State, territory, possession, Commonwealth, or dependency of the United States, or by the District of Columbia, or by any county, municipality, or local taxing authority, except that any real property of the Association shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(3) Appropriations authorized for establishment

There is hereby authorized to be appropriated to the Secretary $5,000,000 for making advances for the purpose of helping to establish the Association. Such advances shall be repaid within such period as the Secretary may deem to be appropriate in light of the maturity and solvency of the Association. Such advances shall bear interest at a rate not less than (A) a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining period to maturity comparable to the maturity of such advances, adjusted to the nearest one-eighth of 1 percent, plus (B) an allowance adequate in the judgment of the Secretary to cover administrative costs and probable losses. Repayments of such advances shall be deposited into miscellaneous receipts of the Treasury.

(c) Board of Directors

(1) Composition of Board; Chairman

(A) The Association shall have a Board of Directors which shall consist of 21 persons, 7 of whom shall be appointed by the President and shall be representative of the general public. The remaining 14 directors shall be elected by the common stockholders of the Association entitled to vote pursuant to subsection (f) of this section. Commencing with the annual shareholders meeting to be held in 1993 -

(i) 7 of the elected directors shall be affiliated with an eligible institution; and

(ii) 7 of the elected directors shall be affiliated with an eligible lender.

(B) The President shall designate 1 of the directors to serve as Chairman.

(2) Terms of appointed and elected members

The directors appointed by the President shall serve at the pleasure of the President and until their successors have been appointed and have qualified. The remaining directors shall each be elected for a term ending on the date of the next annual meeting of the common stockholders of the Association, and shall serve until their successors have been elected and have qualified. Any appointive seat on the Board which becomes vacant shall be filled by appointment of the President. Any elective seat on the Board which becomes vacant after the annual election of the directors shall be filled by the Board, but only for the unexpired portion of the term.

(3) Affiliated members

For the purpose of this subsection, the references to a director ''affiliated with the eligible institution'' or a director ''affiliated with an eligible lender'' means an individual who is, or within 5 years of election to the Board has been, an employee, officer, director, or similar official of -

(A) an eligible institution or an eligible lender;

(B) an association whose members consist primarily of eligible institutions or eligible lenders; or

(C) a State agency, authority, instrumentality, commission, or similar institution, the primary purpose of which relates to educational matters or banking matters.

(4) Meetings and functions of the Board

The Board of Directors shall meet at the call of its Chairman, but at least semiannually. The Board shall determine the general policies which shall govern the operations of the Association. The Chairman of the Board shall, with the approval of the Board, select, appoint, and compensate qualified persons to fill the offices as may be provided for in the bylaws, with such functions, powers, and duties as may be prescribed by the bylaws or by the Board of Directors, and such persons shall be the officers of the Association and shall discharge all such functions, powers, and duties.

(d) Authority of Association

(1) In general

The Association is authorized, subject to the provisions of this section -

(A) pursuant to commitments or otherwise to make advances on the security of, purchase, or repurchase, service, sell or resell, offer participations, or pooled interests or otherwise deal in, at prices and on terms and conditions determined by the Association, student loans which are insured by the Secretary under this part or by a guaranty agency;

(B) to buy, sell, hold, underwrite, and otherwise deal in obligations, if such obligations are issued, for the purpose of making or purchasing insured loans, by a guaranty agency or by an eligible lender in a State described in section 1085(d)(1)(D) or (F) of this title;

(C) to buy, sell, hold, insure, underwrite, and otherwise deal in obligations issued for the purpose of financing or refinancing the construction, reconstruction, renovation, improvement, or purchase at institutions of higher education of any of the following facilities (including the underlying property) and materials (including related equipment, instrumentation, and furnishings) at an eligible institution of higher education:

(i) educational and training facilities;

(ii) housing for students and faculties, dining halls, student unions, and facilities specifically designed to promote fitness and health for students, faculty, and staff or for physical education courses; and

(iii) library facilities, including the acquisition of library materials at institutions of higher education;

except that not more than 30 percent of the value of transactions entered into under this subparagraph shall involve transactions of the types described in clause (ii);

(D) to undertake a program of loan insurance pursuant to agreements with the Secretary under section 1078 of this title, and except with respect to loans under subsection (o) of this section or under section 1078-3 of this title, the Secretary may enter into an agreement with the Association for such purpose only if the Secretary determines that (i) eligible borrowers are seeking and unable to obtain loans under this part, and (ii) no guaranty agency is capable of or willing to provide a program of loan insurance for such borrowers; and

(E) to undertake any other activity which the Board of Directors of the Association determines to be in furtherance of the programs of insured student loans authorized under this part or will otherwise support the credit needs of students, except that -

(i) in carrying out all such activities the purpose shall always be to provide secondary market and other support for lending programs offered by other organizations and not to replace or compete with such other programs;

(ii) nothing in this subparagraph (E) shall be deemed to authorize the Association to acquire, own, operate, or control any bank, savings and loan association, savings bank or credit union; and

(iii) not later than 30 days prior to the initial implementation of a program undertaken pursuant to this subparagraph (E), the Association shall advise the Chairman and the Ranking Member on the Committee on Labor and Human Resources of the Senate and the Chairman and the Ranking Member of the Committee on Education and Labor of the House of Representatives in writing of its plans to offer such program and shall provide information relating to the general terms and conditions of such program.

The Association is further authorized to undertake any activity with regard to student loans which are not insured or guaranteed as provided for in this subsection as it may undertake with regard to insured or guaranteed student loans. Any warehousing advance made on the security of such loans shall be subject to the provisions of paragraph (3) of this subsection to the same extent as a warehousing advance made on the security of insured loans.

(2) Warehousing advances

Any warehousing advance made under paragraph (1)(A) of this subsection shall be made on the security of (A) insured loans, (B) marketable obligations and securities issued, guaranteed, or insured by, the United States, or for which the full faith and credit of the United States is pledged for the repayment of principal and interest thereof, or (C) marketable obligations issued, guaranteed, or insured by any agency, instrumentality, or corporation of the United States for which the credit of such agency, instrumentality, or corporation is pledged for the repayment of principal and interest thereof, in an amount equal to the amount of such advance. The proceeds of any such advance secured by insured loans shall either be invested in additional insured loans or the lender shall provide assurances to the Association that during the period of the borrowing it will maintain a level of insured loans in its portfolio not less than the aggregate outstanding balance of such loans held at the time of the borrowing. The proceeds from any such advance secured by collateral described in clauses (B) and (C) shall be invested in additional insured student loans.

(3) Perfection of security interests in student loans

Notwithstanding the provisions of any State law to the contrary, including the Uniform Commercial Code as in effect in any State, a security interest in insured student loans created on behalf of the Association or any eligible lender as defined in section 1085(a) of this title may be perfected either through the taking of possession of such loans or by the filing of notice of such security interest in such loans in the manner provided by such State law for perfection of security interests in accounts.

(4) Form of securities

Securities issued pursuant to the offering of participations or pooled interests under paragraph (1) of this subsection may be in the form of debt obligations, or trust certificates of beneficial ownership, or both. Student loans set aside pursuant to the offering of participations or pooled interests shall at all times be adequate to ensure the timely principal and interest payments on such securities.

(5) Restrictions on facilities and housing activities

Not less than 75 percent of the aggregate dollar amount of obligations bought, sold, held, insured, underwritten, and otherwise supported in accordance with the authority contained in paragraph (1)(C) shall be obligations which are listed by a nationally recognized statistical rating organization at a rating below the second highest rating of such organization.

(e) Advances to lenders that do not discriminate

The Association, pursuant to such criteria as the Board of Directors may prescribe, shall make advances on security or purchase student loans pursuant to subsection (d) of this section only after the Association is assured that the lender (1) does not discriminate by pattern or practice against any particular class or category of students by requiring that, as a condition to the receipt of a loan, the student or his family maintain a business relationship with the lender, except that this clause shall not apply in the case of a loan made by a credit union, savings and loan association, mutual savings bank, institution of higher education, or any other lender with less than $75,000,000 in deposits, and (2) does not discriminate on the basis of race, sex, color, creed, or national origin.

(f) Stock of the Association

(1) Voting common stock

The Association shall have voting common stock having such par value as may be fixed by its Board of Directors from time to time. Each share of voting common stock shall be entitled to one vote with rights of cumulative voting at all elections of directors.

(2) Number of shares; transferability

The maximum number of shares of voting common stock that the Association may issue and have outstanding at any one time shall be fixed by the Board of Directors from time to time. Any voting common stock issued shall be fully transferable, except that, as to the Association, it shall be transferred only on the books of the Association.

(3) Dividends

To the extent that net income is earned and realized, subject to subsection (g)(2) of this section, dividends may be declared on voting common stock by the Board of Directors. Such dividends as may be declared by the Board of Directors shall be paid to the holders of outstanding shares of voting common stock, except that no such dividends shall be payable with respect to any share which has been called for redemption past the effective date of such call.

(4) Single class of voting common stock

As of the effective date of the Higher Education Amendments of 1992, all of the previously authorized shares of voting common stock and nonvoting common stock of the Association shall be converted to shares of a single class of voting common stock on a share-for-share basis, without any further action on the part of the Association or any holder. Each outstanding certificate for voting or nonvoting common stock shall evidence ownership of the same number of shares of voting stock into which it is converted. All preexisting rights and obligations with respect to any class of common stock of the Association shall be deemed to be rights and obligations with respect to such converted shares.

(g) Preferred stock

(1) Authority of Board

The Association is authorized to issue nonvoting preferred stock having such par value as may be fixed by its Board of Directors from time to time. Any preferred share issued shall be freely transferable, except that, as to the Association, it shall be transferred only on the books of the Association.

(2) Rights of preferred stock

The holders of the preferred shares shall be entitled to such rate of cumulative dividends and such shares shall be subject to such redemption or other conversion provisions as may be provided for at the time of issuance. No dividends shall be payable on any share of common stock at any time when any dividend is due on any share of preferred stock and has not been paid.

(3) Preference on termination of business

In the event of any liquidation, dissolution, or winding up of the Association's business, the holders of the preferred shares shall be paid in full at par value thereof, plus all accrued dividends, before the holders of the common shares receive any payment.

(h) Debt obligations

(1) Approval by Secretaries of Education and the Treasury

The Association is authorized with the approval of the Secretary of Education and the Secretary of the Treasury to issue and have outstanding obligations having such maturities and bearing such rate or rates of interest as may be determined by the Association. The authority of the Secretary of Education to approve the issuance of such obligations is limited to obligations issued by the Association and guaranteed by the Secretary pursuant to paragraph (2) of this subsection. Such obligations may be redeemable at the option of the Association before maturity in such manner as may be stipulated therein. The Secretary of the Treasury may not direct as a condition of his approval that any such issuance of obligations by the Association be made or sold to the Federal Financing Bank. To the extent that the average outstanding amount of the obligations owned by the Association pursuant to the authority contained in subsection (d)(1)(B) and (C) of this section and as to which the income is exempt from taxation under title 26 does not exceed the average stockholders' equity of the Association, the interest on obligations issued under this paragraph shall not be deemed to be interest on indebtedness incurred or continued to purchase or carry obligations for the purpose of section 265 of title 26.

(2) Guarantee of debt

The Secretary is authorized, prior to October 1, 1984, to guarantee payment when due of principal and interest on obligations issued by the Association in an aggregate amount determined by the Secretary in consultation with the Secretary of the Treasury. Nothing in this section shall be construed so as to authorize the Secretary of Education or the Secretary of the Treasury to limit, control, or constrain programs of the Association or support of the Guaranteed Student Loan Program by the Association.

(3) Borrowing authority to meet guarantee obligations

To enable the Secretary to discharge his responsibilities under guarantees issued by him, he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the months preceding the issuance of the notes or other obligations. The

Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. There is authorized to be appropriated to the Secretary such sums as may be necessary to pay the principal and interest on the notes or obligations issued by him to the Secretary of the Treasury.

(4) Action on request for guarantees

Upon receipt of a request from the Association under this subsection requiring approvals by the Secretary of Education or the Secretary of the Treasury, the Secretary of Education or the Secretary of the Treasury shall act promptly either to grant approval or to advise the Association of the reasons for withholding approval. In no case shall such an approval be withheld for a period longer than 60 days unless, prior to the end of such period, the Secretary of Education and the Secretary of the Treasury submit to the Congress a detailed explanation of reasons for doing so.

(5) Authority of Treasury to purchase debt

The Secretary of the Treasury is authorized to purchase any obligations issued by the Association pursuant to this subsection as now or hereafter in force, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, as now or hereafter in force, and the purposes for which securities may be issued under chapter 31 of title 31, as now or hereafter in force are extended to include such purchases. The Secretary of the Treasury shall not at any time purchase any obligations under this subsection if such purchase would increase the aggregate principal amount of his then outstanding holdings of such obligations under this subsection to an amount greater than $1,000,000,000. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States of comparable maturities as of the last day of the month preceding the making of such purchase. The Secretary of the Treasury may, at any time, sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.

(6) Sale of debt to Federal Financing Bank

Notwithstanding any other provision of law the Association is authorized to sell or issue obligations on the security of student loans, the payment of interest or principal of which has at any time been guaranteed under section 1078 or 1079 of this title, to the Federal Financing Bank.

(7) Offset fee

(A) The Association shall pay to the Secretary, on a monthly basis, an offset fee calculated on an annual basis in an amount equal to 0.30 percent of the principal amount of each loan made, insured or guaranteed under this part that the Association holds (except for loans made pursuant to section 1078-3 of this title, subsection (o) of this section, or subsection (q) of this section) and that was acquired on or after August 10, 1993.

(B) If the Secretary determines that the Association has substantially failed to comply with subsection (q) of this section, subparagraph (A) shall be applied by substituting ''1.0 percent'' for ''0.3 percent''.

(C) The Secretary shall deposit all fees collected pursuant to this paragraph into the insurance fund established in section 1081 of this title.

(i) General corporate powers

The Association shall have power -

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel;

(2) to adopt, alter, and use the corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal by its Board of Directors, bylaws, rules, and regulations as may be necessary for the conduct of its business;

(4) to conduct its business, carry on its operations, and have officers and exercise the power granted by this section in any State without regard to any qualification or similar statute in any State;

(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated;

(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Association;

(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

(8) to appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, require bonds for them, and fix the penalty thereof; and

(9) to enter into contracts, to execute instruments, to incur liabilities, and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

(j) Accounting, auditing, and reporting

The accounts of the Association shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants or by independent licensed public accountants, licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States, except that independent public accountants licensed to practice by such regulatory authority after December 31, 1970, and persons who, although not so certified or licensed, meet, in the opinion of the Secretary, standards of education and experience representative of the highest standards prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations may perform such audits until December 31, 1975. A report of each such audit shall be furnished to the Secretary of the Treasury. The audit shall be conducted at the place or places where the accounts are normally kept. The representatives of the Secretary shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Association and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians.

(k) Report on audits by Treasury

A report of each such audit for a fiscal year shall be made by the Secretary of the Treasury to the President and to the Congress not later than 6 months following the close of such fiscal year. The report shall set forth the scope of the audit and shall include a statement (showing intercorporate relations) of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep the President and the Congress informed of the operations and financial condition of the Association, together with such recommendations with respect thereto as the Secretary may deem advisable, including a report of any impairment of capital or lack of sufficient capital noted in the audit. A copy of each report shall be furnished to the Secretary, and to the Association.

(l) Lawful investment instruments; effect of and exemptions from other laws

All obligations issued by the Association including those made under subsection (d)(4) of this section shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under authority or control of the United States or of any officer or officers thereof. All stock and obligations issued by the Association pursuant to this section shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission, to the same extent as securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States. The Association shall, for the purposes of section 355(2) of title 12, be deemed to be an agency of the United States. The obligations of the Association shall be deemed to be obligations of the United States for the purpose of section 3124 of title 31. For the purpose of the distribution of its property pursuant to section 726 of title 11, the Association shall be deemed a person within the meaning of such title. The priority established in favor of the United States by section 3713 of title 31 shall not establish a priority over the indebtedness of the Association issued or incurred on or before September 30, 1992. The Federal Reserve Banks are authorized to act as depositaries, custodians, or fiscal agents, or a combination thereof, for the Association in the general performance of its powers under this section.

(m) Preparation of obligations

In order to furnish obligations for delivery by the Association, the Secretary of the Treasury is authorized to prepare such obligations in such form as the Board of Directors may approve, such obligations when prepared to be held in the Treasury subject to delivery upon order by the Association. The engraved plates, dies, bed pieces, and so forth, executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Association shall reimburse the Secretary of the Treasury for any expenditures made in the preparation, custody, and delivery of such obligations. The Secretary of the Treasury is authorized to promulgate regulations on behalf of the Association so that the Association may utilize the book-entry system of the Federal Reserve Banks.

(n) Report on operations and activities

The Association shall, as soon as practicable after the end of each fiscal year, transmit to the President and the Congress a report of the Association's operations and activities, including a report with respect to all facilities transactions, during each year.

(o) Loan consolidations

(1) In general

The Association or its designated agent may, upon request of a borrower, consolidate loans received under this subchapter and part C of subchapter I of chapter 34 of title 42 in accordance with section 1078-3 of this title.

(2) Use of existing agencies as agent

The Association in making loans pursuant to this subsection in any State served by a guaranty agency or an eligible lender in a State described in section 1085(d)(1)(D) or (F) of this title may designate as its agent such agency or lender to perform such functions as the Association determines appropriate. Any agreements made pursuant to this subparagraph shall be on such terms and conditions as agreed upon by the Association and such agency or lender.

(p) Advances for direct loans by guaranty agencies

(1) In general

The Association shall make advances in each fiscal year from amounts available to it to each guaranty agency and eligible lender described in subsection 1078(h)(1) of this title which has an agreement with the Association which sets forth that advances are necessary to enable such agency or lender to make student loans in accordance with section 1078(h) of this title and that such advances will be repaid to the Association in accordance with such terms and conditions as may be set forth in the agreement and agreed to by the Association and such agency or lender. Advances made under this subsection shall not be subject to subsection (d)(2) of this section.

(2) Limitation

No advance may be made under this subsection unless the guaranty agency or lender makes an application to the

Association, which shall be accompanied by such information as the Association determines to be reasonably necessary.

(q) Lender-of-last-resort

(1) Action at request of Secretary

(A) Whenever the Secretary determines that eligible borrowers are seeking and are unable to obtain loans (q) Lender-of-last-resort

(1) Action at request of Secretary

(A) Whenever the Secretary determines that eligible borrowers are seeking and are unable to obtain loans under this part, the Association or its designated agent shall, not later than 90 days after August 10, 1993, begin making loans to such eligible borrowers in accordance with this subsection at the request of the Secretary. The Secretary may request 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.

(B) Loans made pursuant to this subsection shall be insurable by the Secretary under section 1079 of this title with a certificate of comprehensive insurance coverage provided for under section 1079(b)(1) of this title or by a guaranty agency under paragraph (2)(A) of this subsection.

(2) Issuance and coverage of loans

(A) Whenever the Secretary, after consultation with, and with the agreement of, representatives of the guaranty agency in a State, or an eligible lender in a State described in section 1085(d)(1)(D) of this title, determines that a substantial portion of eligible borrowers in such State or within an area of such State are seeking and are unable to obtain loans under this part, the Association or its designated agent shall begin making such loans to borrowers in such State or within an area of such State in accordance with this subsection at the request of the Secretary.

(B) Loans made pursuant to this subsection shall be insurable by the agency identified in subparagraph (A) having an agreement pursuant to section 1078(b) of this title. For loans insured by such agency, the agency shall provide the Association with a certificate of comprehensive insurance coverage, if the Association and the agency have mutually agreed upon a means to determine that the agency has not already guaranteed a loan under this part to a student which would cause a subsequent loan made by the Association to be in violation of any provision under this part.

(3) Termination of lending

The Association or its designated agent shall cease making loans under this subsection at such time as the Secretary determines that the conditions which caused the implementation of this subsection have ceased to exist.

(r) Safety and soundness of Association

(1) Reports by the Association

The Association shall promptly furnish to the Secretary of Education and Secretary of the Treasury copies of all -

(A) periodic financial reports publicly distributed by the

Association;
(B) reports concerning the Association that are received by the Association and prepared by nationally recognized statistical rating organizations; and
(C)(i) financial statements of the Association within 45 days of the end of each fiscal quarter; and
(ii) reports setting forth the calculation of the capital ratio of the Association within 45 days of the end of each fiscal quarter.

(2) Audit by Secretary of the Treasury

(A) The Secretary of the Treasury may -

(i) appoint auditors or examiners to conduct audits of the Association from time to time to determine the condition of the Association for the purpose of assessing the Association's financial safety and soundness and to determine whether the requirements of this section and section 1087-3 of this title are being met; and

(ii) obtain the services of such experts as the Secretary of the Treasury determines necessary and appropriate, as authorized by section 3109 of title 5, to assist in determining the condition of the Association for the purpose of assessing the Association's financial safety and soundness, and to determine whether the requirements of this section and section 1087-3 of this title are being met.

(B) Each auditor appointed under this paragraph shall conduct an audit of the Association to the extent requested by the Secretary of the Treasury and shall prepare and submit a report to the Secretary of the Treasury concerning the results of such audit. A copy of such report shall be furnished to the Association and the Secretary of Education on the date on which it is delivered to the Secretary of the Treasury.

(C) The Association shall provide full and prompt access to the Secretary of the Treasury to its books and records and other information requested by the Secretary of the Treasury.

(D) Annual assessment. -

(i) In general. - For each fiscal year beginning on or after October 1, 1996, the Secretary of the Treasury may establish and collect from the Association an assessment (or assessments) in amounts sufficient to provide for reasonable costs and expenses of carrying out the duties of the Secretary of the Treasury under this section and section 1087-3 of this title during such fiscal year. In no event may the total amount so assessed exceed, for any fiscal year, $800,000, adjusted for each fiscal year ending after September 30, 1997, by the ratio of the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) for the final month of the fiscal year preceding the fiscal year for which the assessment is made to the Consumer Price Index for All Urban Consumers for September 1997.

(ii) Deposit. - Amounts collected from assessments under this subparagraph shall be deposited in an account within the Treasury of the United States as designated by the Secretary of the Treasury for that purpose. The Secretary of the Treasury is authorized and directed to pay out of any funds available in such account the reasonable costs and expenses of carrying out the duties of the Secretary of the Treasury under this section and section 1087-3 of this title. None of the funds deposited into such account shall be available for any purpose other than making payments for such costs and expenses.

(E) Obligation to obtain, maintain, and report information. -

(i) In general. - 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 -

(I) the financial risk to the Association resulting from the activities of any associated person, to the extent such activities are reasonably likely to have a material impact on the financial condition of the Association, including the Association's capital ratio, the Association's liquidity, or the Association's ability to conduct and finance the Association's operations; and

(II) the Association's policies, procedures, and systems for monitoring and controlling any such financial risk.

(ii) Summary reports. - The Secretary of the Treasury may require summary reports of such information to be filed no more frequently than quarterly. If, as a result of adverse market conditions or based on reports provided pursuant to this subparagraph or other available information, the Secretary of the Treasury has concerns regarding the financial or operational condition of the Association, the Secretary of the Treasury may, notwithstanding the preceding sentence and clause (i), require the Association to make reports concerning the activities of any associated person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of the Association.

(iii) Definition. - For purposes of this subparagraph, the term ''associated person'' means any person, other than a natural person, directly or indirectly controlling, controlled by, or under common control with the Association.

(3) Monitoring of safety and soundness

The Secretary of the Treasury shall conduct such studies as may be necessary to monitor the financial safety and soundness of the Association. In the event that the Secretary of the Treasury determines that the financial safety and soundness of the Association is at risk, the Secretary of the Treasury shall inform the Chairman and ranking minority member of the Committee on Labor and Human Resources of the Senate, the Chairman and ranking minority member of the Committee on Education and Labor of the House of Representatives, and the Secretary of Education of such determination and identify any corrective actions that should be taken to ensure the safety and soundness of the Association.

(4) Capital standard

If the capital ratio is less than 2 percent and is greater than or equal to 1.75 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 2 percent within 36 months.

(5) Capital restoration plan

(A) Submission, approval, and implementation

The Secretary of the Treasury and the Association shall consult with respect to any capital restoration plan submitted pursuant to paragraph (4) and the Secretary of the Treasury shall approve such plan (or a modification thereof accepted by the Association) or disapprove such plan within 30 days after such plan is first submitted to the Secretary of the Treasury by the Association, unless the Association and Secretary of the Treasury mutually agree to a longer consideration period. If the Secretary of the Treasury approves a capital restoration plan (including a modification of a plan accepted by the Association), the Association shall forthwith proceed with diligence to implement such plan to the best of its ability.

(B) Disapproval

If the Secretary of the Treasury does not approve a capital restoration plan as provided in subparagraph (A), then not later than the earlier of the date the Secretary of the Treasury disapproves of such plan by written notice to the Association or the expiration of the 30-day consideration period referred to in subparagraph (A) (as such period may have been extended by mutual agreement), the Secretary of the Treasury shall submit the Association's capital restoration plan, in the form most recently proposed to the Secretary of the Treasury by the Association, together with a report on the Secretary of the Treasury's reasons for disapproval of such plan and an alternative capital restoration plan, to the Chairman and ranking minority member of the Senate Committee on Labor and Human Resources and to the Chairman and ranking minority member of the House Committee on Education and Labor. A copy of such submission simultaneously shall be sent to the Association and the Secretary of Education by the Secretary of the Treasury.

(C) Association implementation and response

Upon receipt of the submission by the Association, the Association shall forthwith proceed with diligence to implement the most recently proposed capital restoration plan of the Association. The Association, within 30 days after receipt from the Secretary of the Treasury of such submission, shall submit to such Chairmen and ranking minority members a written response to such submission, setting out fully the nature and extent of the Association's agreement or the disagreement with the Secretary of the Treasury with respect to the capital restoration plan submitted to the Secretary of the Treasury and any findings of the Secretary of the Treasury.

(6) Substantial capital ratio reduction

(A) Additional plan required

If the capital ratio is less than 1.75 percent and is greater than or equal to 1 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 approved under paragraph (4)) to increase promptly its capital ratio to equal or exceed 1.75 percent. The Secretary of the Treasury and the Association shall consult with respect to any plan or modified plan submitted pursuant to this paragraph. The Secretary of the Treasury shall approve such plan or modified plan (or a modification thereof accepted by the Association) or disapprove such plan or modified plan within 30 days after such plan or modified plan is first submitted to the Secretary of the Treasury by the Association, unless the Association and

Secretary of the Treasury mutually agree to a longer consideration period. If the Secretary of the Treasury approves a plan or modified plan (including a modification of a plan accepted by the Association), the Association shall forthwith proceed with diligence to implement such plan or modified plan to the best of the Association's ability.

(B) Disapproval

If the Secretary of the Treasury disapproves a capital restoration plan or modified plan submitted pursuant to subparagraph (A), then, not later than the earlier of the date the Secretary of the Treasury disapproves of such plan or modified plan (by written notice to the Association) or the expiration of the 30-day consideration period described in subparagraph (A) (as such period may have been extended by mutual agreement), the Secretary of the Treasury shall prepare and submit an alternative capital restoration plan, together with a report on his reasons for disapproval of the Association's plan or modified plan, to the Chairman and ranking minority member of the Committee on Labor and Human Resources of the Senate and to the Chairman and ranking minority member of the Committee on Education and Labor of the House of Representatives. A copy of such submission simultaneously shall be sent to the Association and the Secretary of Education by the Secretary of the Treasury. The Association, within 5 days after receipt from the Secretary of the Treasury of such submission, shall submit to the Chairmen and ranking minority members of such Committees, and the Secretary of the Treasury, a written response to such submission, setting out fully the nature and extent of the Association's agreement or disagreement with the Secretary of the Treasury with respect to the disapproved plan and the alternative plan of the Secretary of the Treasury and any findings of the Secretary of the Treasury.

(C) Review by Congress; Association implementation

Congress shall have 60 legislative days after the date on which Congress receives the alternative plan under subparagraph (B) from the Secretary of the Treasury to review such plan. If Congress does not take statutory action with respect to any such plan within such 60-day period, the Association shall immediately proceed with diligence to implement the alternative capital restoration plan of the Secretary of the Treasury under subparagraph (B). If Congress is out of session when any such alternative plan is received, such 60-day period shall begin on the first day of the next session of Congress.

(7) Actions by Secretary of the Treasury

If the capital ratio of the Association does not equal or exceed 1.75 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 1.75 percent, take any one or more of the following actions:

(A) Limit increase in liabilities

Limit any increase in, or order the reduction of, any liabilities of the Association, except as necessary to fund student loan purchases and warehousing advances.

(B) Restrict growth

Restrict or eliminate growth of the Association's assets, other than student loans purchases and warehousing advances.

(C) Restrict distributions

Restrict the Association from making any capital distribution.

(D) Require issuance of new capital

Require the Association to issue new capital in any form and in any amount sufficient to restore at least a 1.75 percent capital ratio.

(E) Limit executive compensation

Prohibit the Association from increasing for any executive officer any compensation including bonuses at a rate exceeding that officer's average rate of compensation during the previous 12 calendar months and prohibiting the Board from adopting any new employment severance contracts.

(8) Critical capital standard

(A) If the capital ratio is less than 1 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), the Association shall forthwith proceed with diligence to implement the most recently proposed plan with such modifications as the Secretary of the Treasury determines are necessary to cause the capital ratio to equal or exceed 2 percent within 60 months.

(B) If the capital ratio is less than 1 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 (4) or (6)(A), 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 2 percent within 60 months; and

(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 2 percent within 60 months.

(C) Immediately upon a determination under subparagraph (A) or (B) to implement a capital restoration plan, the Secretary of the Treasury shall submit the capital restoration plan to be implemented to the Chairman and ranking minority member of the Committee on Labor and Human Resources of the Senate, the Chairman and ranking minority member of the Committee on Education and Labor of the House of Representatives, and the Secretary of Education.

(9) Additional reports to committees

The Association shall submit a copy of its capital restoration plan, modifications proposed to the Secretary of the Treasury, and proposed modifications received from the Secretary of the Treasury to the Congressional Budget Office and General Accounting Office upon their submission to the Secretary of the Treasury or receipt from the Secretary of the Treasury. Notwithstanding any other provision of law, the Congressional Budget Office and General Accounting Office shall maintain the confidentiality of information received pursuant to the previous sentence. In the event that the Secretary of the Treasury does not approve a capital restoration plan as provided in paragraph (5)(A) or (6)(A), or in the event that a capital restoration plan is modified by the Secretary of the Treasury pursuant to paragraph (6)(B) or (8), the Congressional Budget Office and General Accounting Office shall each submit a report within 30 days of the Secretary of the Treasury's submission to the Chairmen and ranking minority members as required in paragraphs (5)(B), (6)(B), and (8)(C) to such Chairmen and ranking members -

(A) analyzing the financial condition of the Association;

(B) analyzing the capital restoration plan and reasons for disapproval of the plan contained in the Secretary of the Treasury's submission made pursuant to paragraph (5)(B), or the capital restoration plan proposed by the Association and the modifications made by the Secretary of the Treasury pursuant to paragraph (6)(B) or (8);

(C) analyzing the impact of the capital restoration plan and reasons for disapproval of the plan contained in the Secretary of the Treasury's submission made pursuant to paragraph (5)(B), or the impact of the capital restoration plan proposed by the Association and the modifications made by the Secretary of the Treasury pursuant to paragraph (6)(B) or (8), and analyzing the impact of the recommendations made pursuant to subparagraph (D) of this paragraph, on -

(i) the ability of the Association to fulfill its purpose and authorized activities as provided in this section, and

(ii) the operation of the student loan programs; and

(D) recommending steps which the Association should take to increase its capital ratio without impairing its ability to perform its purpose and authorized activities as provided in this section.

(10) Review by Secretary of Education

The Secretary of Education shall review the Secretary of the Treasury's submission required pursuant to paragraph (5)(B), (6)(B), or (8) and shall submit a report within 30 days to the Chairman and ranking minority member of the Senate Committee on Labor and Human Resources and to the Chairman and ranking minority member of the House Committee on Education and Labor -

(A) describing any administrative or legislative provisions governing the student loan programs which contributed to the decline in the Association's capital ratio; and

(B) recommending administrative and legislative changes in the student loan programs to maintain the orderly operation of such programs and to enable the Association to fulfill its purpose and authorized activities consistent with the capital ratio specified in paragraph (4).

(11) Safe harbor

The Association shall be deemed in compliance with the capital ratios described in paragraphs (4) and (6)(A) if the Association is rated in 1 of the 2 highest full rating categories (such categories to be determined without regard to designations within categories) by 2 nationally recognized statistical rating organizations, determined without regard to the Association's status as a federally chartered corporation.

(12) Treatment of confidential information

Notwithstanding any other provision of law, the Secretary of the Treasury, the Secretary of Education, the Congressional Budget Office, and the General Accounting Office shall not disclose any information treated as confidential by the Association or the Association's associated persons and obtained pursuant to this subsection. Nothing in this paragraph shall authorize the Secretary of the Treasury, the Secretary of Education, the Congressional Budget Office, and the General Accounting Office to withhold information from Congress, or prevent the Secretary of Education, the Congressional Budget Office, and the General Accounting Office from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States. For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3) of such section 552.

(13) Enforcement of safety and soundness requirements

The Secretary of Education or the Secretary of the Treasury, as appropriate, may request that the Attorney General bring an action in the United States District Court for the District of Columbia for the enforcement of any provision of this section, or may, under the direction or control of the Attorney General, bring such an action. Such court shall have jurisdiction and power to order and require compliance with this section.

(14) Actions by Secretary

(A) In general

For any fiscal quarter ending after January 1, 2000, the Association shall have a capital ratio of at least 2.25 percent. The Secretary of the Treasury may, whenever such capital ratio is not met, take any one or more of the actions described in paragraph (7), except that -

(i) the capital ratio to be restored pursuant to paragraph (7)(D) shall be 2.25 percent; and

(ii) if the relevant capital ratio is in excess of or equal to 2 percent for such quarter, the Secretary of the Treasury shall defer taking any of the actions set forth in paragraph (7) until the next succeeding quarter and may then proceed with any such action only if the capital ratio of the Association remains below 2.25 percent.

(B) Applicability

The provisions of paragraphs (4), (5), (6), (8), (9), (10), and (11) shall be of no further application to the Association for any period after January 1, 2000.

(15) Definitions

As used in this subsection:

(A) The term ''nationally recognized statistical rating organization'' means any entity recognized as such by the Securities and Exchange Commission.

(B) The term ''capital ratio'' means the ratio of total stockholders' equity, as shown on the Association's most recent quarterly consolidated balance sheet prepared in the ordinary course of its business, to the sum of -

(i) the total assets of the Association, as shown on the balance sheet prepared in the ordinary course of its business; and

(ii) 50 percent of the credit equivalent amount of the following off-balance sheet items of the Association as of the date of such balance sheet -

(I) all financial standby letters of credit and other irrevocable guarantees of the repayment of financial obligations of others; and

(II) all interest rate contracts and exchange rate contracts, including interest exchange agreements, floor, cap, and collar agreements and similar arrangements.

For purposes of this subparagraph, the calculation of the credit equivalent amount of the items set forth in clause (ii) of this subparagraph, the netting of such items and eliminations for the purpose of avoidance of double-counting of such items shall be made in accordance with the measures for computing credit conversion factors for off-balance sheet items for capital maintenance purposes established for commercial banks from time to time by the Federal Reserve Board, but without regard to any risk weighting provisions in such measures.

(C) The term ''legislative days'' means only days on which either House of Congress is in session.

(16) Dividends

The Association may pay dividends in the form of cash or noncash distributions so long as 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 the capital standards set forth in this section.

(17) Certification prior to payment of dividend

Prior to the payment of any dividend under paragraph (16), the Association shall certify to the Secretary of the Treasury that the payment of the dividend will be made in compliance with paragraph (16) and shall provide copies of all calculations needed to make such certification.

(s) Charter sunset

(1) Application of provisions

This subsection applies beginning 18 months and one day after September 30, 1996, if no reorganization of the Association occurs in accordance with the provisions of section 1087-3 of this title.

(2) Sunset plan

(A) Plan submission by the Association

Not later than July 1, 2007, the Association shall submit to the Secretary of the Treasury and to the Chairman and Ranking Member of the Committee on Labor and Human Resources of the Senate and the Chairman and Ranking Member of the Committee on Economic and Educational Opportunities of the House of Representatives, a detailed plan for the orderly winding up, by July 1, 2013, of business activities conducted pursuant to the charter set forth in this section. Such plan shall -

(i) ensure that the Association will have adequate assets to transfer to a trust, as provided in this subsection, to ensure full payment of remaining obligations of the Association in accordance with the terms of such obligations;

(ii) provide that all assets not used to pay liabilities shall be distributed to shareholders as provided in this subsection; and

(iii) provide that the operations of the Association shall remain separate and distinct from that of any entity to which the assets of the Association are transferred.

(B) Amendment of the plan by the Association

The Association shall from time to time amend such plan to reflect changed circumstances, and submit such amendments to the Secretary of the Treasury and to the Chairman and Ranking Minority Member of the Committee on Labor and Human Resources of the Senate and Chairman and Ranking Minority Member of the Committee on Economic and Educational Opportunities of the House of Representatives. In no case may any amendment extend the date for full implementation of the plan beyond the dissolution date provided in paragraph (3).

(C) Plan monitoring

The Secretary of the Treasury shall monitor the Association's compliance with the plan and shall continue to review the plan (including any amendments thereto).

(D) Amendment of the plan by the Secretary of the Treasury

The Secretary of the Treasury may require the Association to amend the plan (including any amendments to the plan), if the Secretary of the Treasury deems such amendments necessary to ensure full payment of all obligations of the Association.

(E) Implementation by the Association

The Association shall promptly implement the plan (including any amendments to the plan, whether such amendments are made by the Association or are required to be made by the Secretary of the Treasury).

(3) Dissolution of the Association

The Association shall dissolve and the Association's separate existence shall terminate on July 1, 2013, after discharge of all outstanding debt obligations and liquidation pursuant to this subsection. The Association may dissolve pursuant to this subsection prior to such date by notifying the Secretary of Education and the Secretary of the Treasury of the Association's intention to dissolve, unless within 60 days of receipt of such notice the Secretary of Education notifies the Association that the Association continues to be needed to serve as a lender of last resort pursuant to subsection (q) of this section or continues to be needed to purchase loans under an agreement with the Secretary described in paragraph (4)(A). On the dissolution date, the Association shall take the following actions:

(A) Establishment of a trust

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 remaining obligations of the Association to a 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 noncallable obligations of the United States 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 reinvestment of such interest, to pay the principal of, and interest on, the remaining obligations in accordance with their terms.

(B) Use of trust assets

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 remaining obligations assumed by the trust. Upon the fulfillment of the trustee's duties under the trust, any remaining assets of the trust shall be transferred to the persons who, at the time of the dissolution, were the shareholders of the Association, or to the legal successors or assigns of such persons.

(C) Obligations not transferred to the trust

The Association shall make proper provision 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 outstanding.

(D) Transfer of remaining assets

After compliance with subparagraphs (A) and (C), the Association shall transfer to the shareholders of the Association any remaining assets of the Association.

(4) Restrictions relating to winding up

(A) Restrictions on new business activity or acquisition of assets by the Association

(i) In general

Beginning on July 1, 2009, the Association shall not engage in any new business activities or acquire any additional program assets (including acquiring assets pursuant to contractual commitments) described in subsection (d) of this section other than in connection with the Association -

(I) serving as a lender of last resort pursuant to subsection (q) of this section; and

(II) purchasing loans insured under this part, if the Secretary, with the approval of the Secretary of the Treasury, enters into an agreement with the Association for the continuation or resumption of the Association's secondary market purchase program because the Secretary determines there is inadequate liquidity for loans made under this part.

(ii) Agreement

The Secretary is authorized to enter into an agreement described in subclause (II) of clause (i) with the Association covering such secondary market activities. Any agreement entered into under such subclause shall cover a period of 12 months, but may be renewed if the Secretary determines that liquidity remains inadequate. The fee provided under subsection (h)(7) of this section shall not apply to loans acquired under any such agreement with the Secretary.

(B) Issuance of debt obligations during the wind up period; attributes of debt obligations

The Association shall not issue debt obligations which mature later than July 1, 2013, except in connection with serving as a lender of last resort pursuant to subsection (q) of this section or with purchasing loans under an agreement with the Secretary as described in subparagraph (A). Nothing in this subsection shall modify the attributes accorded the debt obligations of the Association by this section, regardless of whether such debt obligations are transferred to a trust in accordance with paragraph (3).

(C) Use of Association name

The Association may not transfer or permit the use of the name ''Student Loan Marketing Association'', ''Sallie Mae'', or any variation thereof, to or by any entity other than a subsidiary of the Association.

Discussion Questions

Part 1 – Wholly Owned Government Corporations

1. Select three significant organizational features of a government corporation and compare and contrast the treatment of those features in the OMB guidelines (A1), the Moe paper (A2), and the proposed legislation (A3).

2. What is the primary role of the SLSDC Board of Directors? What authority does the Board exercise? Compare the scope of authority of the Administrator and the Board. Is a board of directors needed for a government corporation? (B1, B3, and D1)

3. What advice would you give the President about the most important criteria for the selection of the next administrator of the St. Lawrence Seaway? Identify the characteristics of government corporations that may require management and leadership skills that are different from the skills required for managing a direct government agency. (A1, A2, A3, and D1)

4. How much flexibility does the administrator have in the selection and retention of employees of the Seaway? Is he bound by the statutory requirements of the civil service system (B3)? How important is staffing flexibility in the management of a government corporation (A1)?

5. Compare and contrast the OMB Budget and Credit Standards (A1), the budget section of the Government Corporation Control Act (B2), and the budget submitted by the President for SLSDC for 2002 (C3).

6. Review the two legal opinions relating to the authority of a government corporation to determine the character and necessity of its expenditures (C1 and C2). What is the effect of these opinions on the budget flexibility of a government corporation? As the Administrator of the St. Lawrence Seaway Development Corporation, how would you justify holding conferences and meetings and serving refreshments at those events?

7. Is the SLSDC self-supporting? What is the source of its operating funds? How is the funding different from the standard government corporation funding model (B1, C3, and D1)?

8. Compare the reporting requirements of the Government Corporation Control Act (B2) and the Annual Report (D1). Did the Annual Report meet the statutory requirements? What changes would you make in the format or content of the report to enhance its effectiveness as an accountability document?

9. List the primary accountability measures available to the government for oversight of a government corporation. Identify the two that you believe would be the most effective in protecting the interest of the taxpayer and explain the reasons for you selections (A3, B3 D1, D2, D3, and D4).

10. If the St. Lawrence Seaway development Corporation were not a federal government corporation today, would it be a logical candidate to become one? What do you want to know about the St. Lawrence Seaway and its operations to answer that question? What are the advantages or disadvantages of giving Seaway the status of a government corporation (A1, A2, and D1)?

Part 2 – Government Sponsored Enterprises

1. Identify five significant standards for an effective statutory charter for a GSE. Discuss the underlying rationale for two of the standards. (A1 and A3 in Government Corporations section and A1 and B1 in this section)

2. The GSE charter for Sallie Mae defines the composition and role of the Board of Directors. Items A1 and A3 from the Government Corporations section and A1 and B1 from the GSE section also refer to boards. Compare and contrast the roles and structure of the boards of government corporations and those of GSEs.

3. Sallie Mae is a privately owned corporation, with directors who are responsible to shareholders. Should directors, officers, and employees of this GSE receive stock options and other compensation that is tied to the profitability of the corporation? Discuss the rationale for your position.

4. Why is the government concerned about the safety and soundness of a GSE such as Sallie Mae? What is the government's financial obligation to the shareholders and creditors of a GSE that fails (A1 in Government Corporations section; A1 in this section)?

5. Identify the student loan services the new holding company has added during the privatization transition period that it was not allowed to offer under the original charter. (C1 Section 1087-2a and B3)

6. What were some of the challenges facing Sallie Mae that influenced the decision to privatize (D1 and B2, section titled, "Item 1. Business," and especially the subsections titled "Financing/Securitization" and "Competition")? Is Sallie Mae still profitable, now that it has arranged to give up its government sponsorship?

7. On balance, what are the strengths and limitations of a government sponsored enterprise as a tool of government policy (A1 in appendix in Government Corporations section, A1 in this section)?