

**The Mechanics of Removing Government Sponsorship from
Fannie Mae, Freddie Mac, and the Federal Home Loan Banks**

By Thomas H. Stanton

American Enterprise Institute

February 4, 2004

Thomas H. Stanton
Attorney at Law
801 Pennsylvania Avenue, NW
Suite 625
Washington, DC 20004
(202) 965-2200
tstan77346@aol.com

EXECUTIVE SUMMARY
The Mechanics of Removing Government Sponsorship from
Fannie Mae, Freddie Mac, and the Federal Home Loan Banks
By Thomas H. Stanton

This paper presents an approach to removing government sponsorship from the three housing government sponsored enterprises (GSEs). The core idea of this paper is to terminate the authorized activities of the existing GSEs over a five-year transition period, allow the companies to shift operations to a non-GSE basis, and thereby wean them and the markets from the effects of government sponsorship.

The process for Fannie Mae and Freddie Mac can be summarized as follows:

- **Starting on the date of enactment of the enabling legislation, Fannie Mae and Freddie Mac stop purchasing mortgages or other assets for their portfolios. The GSEs are required to reduce the assets in their portfolios according to a set timetable and sell any remaining assets at the end of the five-year period.**
- **Fannie Mae and Freddie Mac continue to securitize mortgages for three years. At the end of six months the GSE securitization business begins to phase out over 30 months. At the end of five years from the date of enactment, all remaining securitized mortgages are transferred to one or more adequately capitalized trusts that will service the MBS.**
- **The two GSEs are authorized to operate non-GSE holding companies once they have (1) achieved an “AA” stand-alone rating, which the GSEs must maintain over the five year period, and (2) spun-off their AUS and mortgage databases into independent companies. The holding companies may conduct any business authorized by existing law and will be subject to all laws that apply to private companies engaged in the same lines of business.**
- **Within five years, the two GSEs are wound up. Outstanding agency debt is defeased and mortgages backing outstanding agency-status MBS are transferred to well-capitalized trusts.**

By this point, Fannie Mae and Freddie Mac would have selected an appropriate organizational form, presumably as some type of financial services holding company. After winding up the GSE subsidiaries they would carry out their businesses without the benefits or limitations that apply specially to GSEs.

The Federal Home Loan Banks (FHLBanks) undergo a comparable five-year process that can be summarized as follows:

- **Starting on the date of enactment of the enabling legislation, the Federal Home Loan Banks stop providing financial products other than advances collateralized by investment-grade loans or mortgages. The FHLBanks allow the assets in their portfolios to run off and sell all remaining assets by the end of the five-year period.**
- **The Federal Home Loan Banks continue to provide advances collateralized by investment-grade loans or mortgages for three years. At the end of six months the FHLBanks begin to phase out this activity on a 30-month schedule.**
- **Each Federal Home Loan Bank is authorized to operate a non-GSE holding company once it has achieved an “AA” stand-alone rating, which the GSE subsidiary must maintain over the five-year period. The holding companies may conduct any business authorized by existing law and would be subject to all laws that apply to private companies engaged in the same lines of business.**
- **Within five years, the GSE is wound up. Outstanding agency debt is defeased.**

Some of the FHLBanks would be likely to form holding companies and to provide a variety of financial services without agency-status backing. Because the Federal Home Loan Banks are cooperatives, it is possible that some of them could develop into bankers' banks that are quite attentive to the needs of their customers. The governance structure of each holding company, i.e., whether it would be organized with investor shareholders or as a cooperative, would be determined by the FHLBank members.

The Mechanics of Removing Government Sponsorship from Fannie Mae, Freddie Mac, and the Federal Home Loan Banks

By Thomas H. Stanton¹

I. Introduction

This paper presents an approach to removing government sponsorship from the three housing government sponsored enterprises (GSEs). The three GSEs are massive institutions with a total of almost \$ 4 trillion of debt obligations and mortgage-backed securities (MBS) outstanding. Those obligations and MBS are backed by the perception of an implicit government guarantee; if a GSE falters or fails, market participants have reason to expect the government to protect holders of GSE obligations and MBSs from loss.

The core idea of this paper is to terminate the authorized activities of the existing GSEs over a five-year transition period, allow the companies to shift operations to a non-GSE basis, and thereby wean them and the markets from the effects of government sponsorship. This paper is organized as follows. Section I is this introduction. Section II presents an overview of a five-year process for removing government sponsorship from Fannie Mae and Freddie Mac. Section III presents a similar process for the Federal Home Loan Bank System. Finally, the appendix discusses the mechanics of removing government sponsorship from Sallie Mae, a GSE that serves the student loan market and that is in the process of giving up its GSE status. This paper has been revised thanks to comments from a number of people, including speakers and members of the audience at an AEI Forum held on January 12, 2004. The author is grateful for all feedback that has contributed to improving this work.

Issues to be Resolved

Subsidiary details of the mechanics of removing government sponsorship will need to be addressed. One of these is the question of shareholder approval of restructuring Fannie Mae, Freddie Mac, and individual Federal Home Loan Banks into holding companies. The 1996 Sallie Mae Restructuring Act addressed this issue by providing that a simple majority of shareholders could approve the restructuring. If the enabling legislation were to specify that each housing GSE would be wound up within five years, but that the company would have an opportunity to restructure itself into a holding company to carry on new business activities, then management may, in good faith, be able to propose such a restructuring for shareholder approval, as occurred in Sallie Mae's case.²

¹ This paper has greatly benefited from insights contributed by Bert Ely and Peter J. Wallison. The author also wishes to thank the AEI for its assistance and support in undertaking this research project. However, all responsibility for this paper rests solely with the author.

² The rights of GSE shareholders, among other issues, were addressed in an earlier study, Thomas H. Stanton, "Restructuring Fannie Mae and Freddie Mac: Framework and Policy Options," 1994, and "Restructuring Fannie Mae and Freddie Mac: Supplementary Analysis," 1995, both published, together with a Fannie Mae response, in Office of Policy Development and Research, U.S. Department of Housing

Another issue relates to the application of an “AA” stand alone rating, i.e., one that is determined without regard to any perception of ties of the GSE to the government or any form of financial backing other than is provided by the financial strength of the GSE by itself. It is not clear that the traditional rating agencies would be willing to provide such a rating. If not, then some other measure of financial strength would be required before a GSE was allowed to operate a holding company and begin engaging in activities that are not backed by agency-status. The purpose of the “AA” requirement for each GSE is to help limit premature transfers of resources from the GSE to the parent for the benefit of shareholders of the holding company and to the potential detriment of taxpayers.

Yet another question concerns political support. This plan has been developed without any consideration of whether the removal of government sponsorship from the GSEs will gain any political support in Congress or the administration. While additional regulation is needed, the rate of growth of the GSEs and their high leverage mean that removal of government sponsorship is the only mechanism that will adequately protect the economy and the taxpayers from the increasing financial exposure that the GSEs create. If at some time in the future Congress comes to recognize this, the plan outlined in this paper will be available to assist in the process.

Distributional Issues

Removing government sponsorship from the three housing GSEs also raises a number of issues of benefits and burdens that will need to be sorted out. There are two benefits that might be taken into account. First, the Congressional Budget Office has estimated that the implicit backing of the GSEs costs the government more than \$15 billion per year. The removal of government sponsorship from the GSEs will represent a saving of at least that amount to the government. Second, this paper proposes levying potential fees on Fannie Mae and Freddie Mac during the transition period. The extent and amount of these fees cannot be predicted at this point.

There are two clear burdens to be addressed when government sponsorship is removed. One is the current obligation of the Federal Home Loan Bank System for making payments to support obligations of the Resolution Funding Corporation (Refcorp). This is a legacy of the savings and loan debacle and congressional action at that time. A second obligation is the fee amounting to ten percent of net income that the Federal Home Loan Bank System makes to support the FHLBank Affordable Housing Program. This program reduces funding costs of rental housing and homeownership by providing grants and interest-rate subsidies for affordable mortgage loans.

and Urban Development, *Studies on Privatizing Fannie Mae and Freddie Mac*, May 1996, pp. 1-47, 74-96, and 48-73, respectively. See also, John Connor, “Sallie Mae Could Face Prospect of Liquidation: White House Proposes Move if Privatization Option is Rejected by Holders,” *Wall Street Journal*, June 21, 1995, p. C1.

These distributional issues will be resolved in the course of the legislative process. One relevant consideration is whether policymakers will seek to return benefits to taxpayers from the GSEs as partial compensation for the considerable government benefits provided to them over the years. In the debate over Sallie Mae, some policymakers proposed a so-called “exit fee,” for the GSE, for example. Imposing such a fee on Fannie Mae and Freddie Mac (to complement the current FHLBank assessment) might help to substitute for the current FHLBank Refcorp obligation, at least in the transition years. Alternatively, the outstanding Refcorp obligation might be paid through a defeasance that is funded from the sale of assets of the System.³

Another question concerns the needs of affordable housing. Repeated studies show that Fannie Mae and Freddie Mac lag rather than lead the primary mortgage market in supporting affordable housing for disadvantaged minorities and lower income people and communities.⁴ By contrast, the FHLBanks’ Affordable Housing Program is more beneficial program. It is recommended that Congress establish a fund for low income and disadvantaged families in conjunction with the removal of government sponsorship from the housing GSEs.⁵

This paper will not further address these distributional questions, or any associated budget scoring issues, because they depend upon policymakers’ value judgments rather than the mere mechanics of removing government sponsorship from the housing GSEs.

A Housing Market Without GSEs

How will the residential mortgage market look without the GSEs? The elimination of the GSEs will permit many financial institutions that are now limited to the so-called jumbo market – the market for larger mortgages that Fannie Mae and Freddie Mac cannot acquire – to compete for the business of middle class borrowers. This competition, and the innovation it will encourage, should reduce costs and increase the options available to homebuyers and homeowners.

³ In other words, the assets would be taken off of the balance sheet of the GSE subsidiary in a transaction involving the purchase of Treasury obligations of the same maturity and the placement of the Refcorp obligation and the Treasury obligations into a stand-alone trust).

⁴ See, e.g., Joint Center for Housing Studies, Harvard University, *The 25th Anniversary of the Community Reinvestment Act: Access to Capital in an Evolving Financial Services System*, Cambridge, MA: March 2002, pp. iv and 13 (institutions subject to the Community Reinvestment Act lead the primary market in serving low-income people and neighborhoods while GSEs trail behind).

⁵ This suggestion does raise budget issues, because the current subsidy for the housing GSEs is off budget, while the new housing fund would require budgeted funds. Another possibility would be to impose a so-called offset fee on activities of Fannie Mae and Freddie Mac that are funded by agency status borrowings or securitizations. The Congress subjected Sallie Mae to an offset fee (as distinguished from an exit fee) in 1993, as a way of offsetting the value of agency status to the GSE. While this contribution to an Affordable Housing Fund would phase out over the five-year period for the phasing out of agency status, it could provide a substantial amount of money in the interim. Because of the effect of such an offset fee on the pricing of the mortgages that the GSEs would securitize during the transition period, this option – similar to other distributional issues – involves tradeoffs and value judgments.

However, to promote a lower-cost and strong competitive environment, the Congress should consider a new financing vehicle for mortgages, a Mortgage Holding Subsidiary (MHS) that would hold the mortgages originated by banks and other mortgage lenders, and might provide lower interest rates for homebuyers without the need for government support. The enabling legislation that provides for removal of government sponsorship from the three housing GSEs also could authorize banks and thrift institutions to create Mortgage Holding Subsidiaries.

The attributes of the MHS concept are presented in a companion paper by Bert Ely. One major benefit may be that the MHS could fund mortgages at lower cost than is possible for depository institutions under current law and regulations. Comments are invited as to the extent that the creation of competing Mortgage Holding Subsidiaries might reduce the impact on the housing market of the transition from a market dominated by GSEs.

In an effort to assure that the plan outlined in this paper and its effects on the housing market are fully considered, it will continue to be reviewed at public conferences at AEI. In addition, the author welcomes comments from economists, housing experts and others, before and after those conferences.

II. The Mechanics of Removing Government Sponsorship from Fannie Mae and Freddie Mac

Starting on the date of enactment of the enabling legislation, Fannie Mae and Freddie Mac stop purchasing mortgages or other assets for their portfolios. The GSEs are required to reduce the assets in their portfolios according to a set timetable and sell any remaining assets at the end of the five-year period.

GSE Activities

- Starting on the date of enactment of the enabling legislation, Fannie Mae and Freddie Mac would stop purchasing mortgages, MBS, or other assets for their portfolios.
- The GSEs would be allowed to roll over debt as needed to fund the existing portfolios but would not be permitted to make new purchases for their portfolios.
- The two GSEs would be subject to a fixed schedule for disposing of their portfolios, by runoff and asset sales, over the five-year transition period. They would be subject to an offset fee, starting perhaps at 30 basis points, which would increase over the five year transition period and would apply to any assets they hold beyond those permitted by the schedule. The combination of schedule and escalating offset fee is meant to provide the GSEs some flexibility in timing the disposition of their assets, while protecting against the chance that a large volume of assets would remain at the end of the transition period.
- The GSEs would be required to strengthen their balance sheets so that they can achieve and maintain an “AA” rating on a stand-alone basis.

Other Steps

- Safety-and-soundness regulation would be strengthened and placed into the Treasury Department, along with responsibility for supervising the five-year transition. The regulator would be authorized to monitor and regulate any transfers of resources from the GSE to any non-GSE affiliates.
- The conforming loan limits would be frozen at their existing levels.
- The two GSEs and their securities would be subject to SEC jurisdiction.
- The GSE automated underwriting systems (AUS) and information contained in the GSE mortgage databases would be provided to independent companies that would be spun off by the GSEs. The GSEs would retain copies of their AUS and information. No interlocking directors or managers with the GSEs (or, later, the holding companies) would be permitted. The spun-off companies would be required to (1) remain independent and (2) provide access through licensing on comparable terms to all mortgage market participants that are interested in acquiring or using the AUS or some or all of

the data in the spun-off databases. The spun-off companies would be permitted, but not required, to update or expand the scope of the data that they hold and sell.

- A five-year sunset would be placed into the Fannie Mae and Freddie Mac charter acts to terminate the legal authority of the GSEs at the end of the five-year transition period.

Fannie Mae and Freddie Mac continue to securitize mortgages for three years. At the end of six months the GSE securitization business begins to phase out over 30 months. At the end of five years from the date of enactment, all remaining securitized mortgages are transferred to one or more adequately capitalized trusts that will service the MBS.

GSE Activities

- The two GSEs would be permitted to continue their business of funding mortgages through agency-status securitization. After six months, they would be subject to a schedule to phase out all new MBS business over a 30-month period. The GSEs would be subject to an offset fee, starting perhaps at 10 basis points, which would increase over the five-year transition period and would apply to any securitization they conduct beyond what is permitted by the schedule. The combination of schedule and escalating offset fee is meant to provide the GSEs some flexibility in timing the winding down of their agency status securitization business, while protecting against the chance that a large volume of securitization would be conducted at the very end of the 30-month phase out period.
- Three years after the date of enactment the GSE subsidiaries would stop all new business. The agency-status MBS business would begin to run off.

Other Steps

- Five years after the date of enactment all mortgages backing outstanding agency-status MBS would be placed with trustees operating under the Trust Indenture Act of 1939. The regulator would determine how many trustees were selected, based on efficiencies and economies of scale. Each GSE would be required to capitalize each MBS trust at a level equal to one percent of the remaining balance of outstanding MBS of the trust. Each trust would be permitted to remit, to the appropriate holding company, earnings generated by the MBS trusts as well as equity capital freed as the volume of outstanding MBS shrinks.

The two GSEs are authorized to operate non-GSE holding companies once they have (1) achieved an “AA” stand-alone rating, which the GSEs must maintain over the five year period, and (2) spun-off their AUS and mortgage databases into independent companies. The holding companies may conduct any business authorized by existing law and will be subject to all laws, such as antitrust,

securities registration, and privacy, that apply to private companies engaged in the same lines of business.

- The GSE regulator would certify that each GSE has (1) achieved an “AA” stand-alone rating and (2) spun off its AUS and mortgage database completely and in accessible form to an independent company that is granting access to interested users on comparable terms.
- The two GSEs then would be authorized to operate a holding company, on the Sallie Mae model of giving up government sponsorship, with the GSE as a subsidiary (described in the Appendix to this paper). The holding companies and their securities would be subject to SEC jurisdiction and all other laws applicable to private companies in the same lines of business.
- The parent Fannie Mae and Freddie Mac holding companies would be permitted to engage in all lawful activities, e.g., to deal in mortgages through the holding company and to engage in other mortgage-related activities, including origination and servicing, as well as non-mortgage activities permitted by law.
- The holding company would be allowed to affiliate with a depository institution as soon as the GSE subsidiary is liquidated, which could happen before the end of the five-year transition period.⁶

Within five years, the two GSEs are wound up. Outstanding agency debt is defeased and mortgages backing outstanding agency-status MBS are transferred to well-capitalized trusts.

- The Fannie Mae and Freddie Mac GSE subsidiaries would be wound up completely.
- Outstanding agency-status debt would be defeased (i.e., taken off of the balance sheet of the GSE subsidiary in a transaction involving the purchase of Treasury obligations of the same maturity and the placement of the agency debt and the Treasury debt into a stand-alone trust).
- All GSE regulation would terminate once the GSEs are wound up.
- The GSE charters would sunset, along with all charter restrictions that apply to the two GSEs, thereby terminating the legal authority for the GSEs.

By this point, Fannie Mae and Freddie Mac would have selected an appropriate organizational form, presumably as some type of financial services holding company. After winding up the GSE subsidiaries they would carry out their businesses (1) without the benefits or limitations that apply specially to GSEs and (2) according to all laws that apply to companies in their chosen lines of business.

⁶ 12 U.S.C. § 1828 (s) provides that, with limited exceptions not relevant here, “No depository institution may be an affiliate of, be sponsored by, or accept financial support, directly or indirectly, from any Government-sponsored enterprise.”

III. The Mechanics of Removing Government Sponsorship from the Federal Home Loan Banks

Starting on the date of enactment of the enabling legislation, the Federal Home Loan Banks stop providing financial products other than advances collateralized by investment-grade loans or mortgages. The FHLBanks allow the assets in their portfolios to run off and sell all remaining assets by the end of the five-year period.

GSE Activities

- Starting on the date of enactment of the enabling legislation, the asset powers of the Federal Home Loan Banks would be limited to advances collateralized by investment-grade loans and mortgages.
- FHLBank portfolios would be reduced by runoff and asset sales over the five-year transition period.
- The Mortgage Partnership Finance (MPF) Program and similar programs funded through agency status borrowings, and the FHLBanks' investment portfolios, would be wound up.
- The FHLBanks no longer would be permitted to offer financial guarantees backed by agency-status.
- The FHLBanks would be required to strengthen their balance sheets so that they can achieve and maintain an "AA" rating on a stand-alone basis.
- The FHLBanks would be permitted to merge and otherwise consolidate their operations, provided that the combined institutions each achieved and maintained an "AA" rating on a stand-alone basis.
- A five-year sunset would be placed into the Federal Home Loan Bank Act, so that the GSE authority terminates by the end of the transition period. New debt issuances and advances would be limited to maturities that come due before the sunset date.

Other Steps

- The Federal Home Loan Banks would be required to match-fund their portfolios, with minimal interest rate exposure.
- Safety-and-soundness regulation would be strengthened and placed into the Treasury Department, again with authority to supervise the winding up of the GSEs. The regulator would be authorized to monitor and regulate any transfers of resources from the GSE to any non-GSE affiliates.
- The FHLBanks and their securities would be subject to SEC jurisdiction.

The Federal Home Loan Banks continue to provide advances collateralized by investment-grade loans or mortgages for three years. At the end of six months the FHLBanks begin to phase out this activity on a 30-month schedule.

- The FHLBanks would be permitted to continue their business of providing advances collateralized by investment-grade loans or mortgages. After six months, they would be subject to a schedule to phase out all new advance business over a 30-month period.
- Three years after the date of enactment the GSE subsidiaries would stop all new business. The agency-status advance business would begin to run off.

Each Federal Home Loan Bank is authorized to operate a non-GSE holding company once it has achieved an “AA” stand-alone rating, which the GSE subsidiary must maintain over the five-year period. The holding companies may conduct any business authorized by existing law and would be subject to all laws that apply to private companies engaged in the same lines of business.

- Each individual FHLBank would be authorized to operate a holding company, on the Sallie Mae model of giving up government sponsorship, with the GSE as a subsidiary (described in the Appendix). The holding companies and their securities would be subject to SEC jurisdiction and all other laws applicable to private companies.
- The FHLBanks would be permitted to engage in mortgage-related and other lawful activities through the holding company, including origination and servicing and provision of letters of credit, and services of a bankers’ bank, such as provision of back-office support and offering of loan participations. The holding companies would not be subject to geographic limitations on their non-GSE activities.
- Outstanding agency-status debt would be defeased (i.e., taken off of the balance sheet of the GSE subsidiary in a transaction involving the purchase of Treasury obligations of the same maturity and the placement of the agency debt and the Treasury debt into a stand-alone trust).
- The Federal Home Loan Bank System and the regulator, to the extent possible, would reduce the maturity of funds borrowed and advances made so the remaining outstanding assets and liabilities of the FHLBs at the sunset date are minimized.
- Each holding company would be allowed to affiliate with a depository institution as soon as the GSE subsidiary is liquidated, which could happen before the end of the five-year transition.

Some of the FHLBanks would be likely to form holding companies and to provide a variety of financial services without agency-status backing. Because the Federal Home Loan Banks are cooperatives, it is possible that some of them could develop into bankers’ banks that are quite attentive to the needs of their customers. The

governance structure of each holding company, i.e., whether it would be organized with investor shareholders or as a cooperative, would be determined by the FHLBank members.

Within five years, the GSE is wound up. Outstanding agency debt is defeased.

- All System institutions backed by agency status would be wound up.
- Any outstanding agency-status debt would be defeased.
- Remaining assets would be sold and remaining funds would be returned to System members, or to the holding companies, as appropriate.
- All GSE regulation would terminate once the GSEs are wound up.
- The Federal Home Loan Bank Act would sunset, thereby terminating the legal authority for the GSE.

By this point, some of the FHLBanks may have selected an appropriate organizational form for doing business without the benefit of agency status, presumably as some type of financial services holding company. After winding up the GSE subsidiary they would carry out their businesses without the benefits or limitations that apply specially to GSEs.

APPENDIX

Removing Government Sponsorship from a GSE: The Sallie Mae Precedent

Differences Between This Plan and the Sallie Mae Precedent

When Sallie Mae decided to give up government sponsorship the GSE utilized a holding company structure to conduct its new non-GSE business and wind up the GSE. Competitors of Sallie Mae have contended that the GSE obtained a long transition period that has allowed the parent holding company, now known as SLM Corporation, to expand into many new lines of business, including origination and guaranty of federal student loans, even while the GSE subsidiary continues to engage in new business. Sallie Mae today remains the largest holder of student loans and is a much larger and more diversified financial institution than it had been as a GSE. SLM Corporation has announced that it will liquidate the GSE by September 30, 2006, ten years after enactment of the law permitting Sallie Mae to give up its government sponsorship.

The process for the housing GSEs would be much shorter than the Sallie Mae process. It provides for a winding up of the GSE that would take place independently of the authorized expansion of activities through the non-GSE parent holding company. Placing the GSE in a wind-up mode would help to assure that the holding company could not use the aura of the GSE subsidiary's agency status somehow to support the holding company's borrowings as well. Figure 1, below, provides a diagram of the holding company structure.

The Sallie Mae Process

The Congress in 1996 enacted a law that created the following framework for privatization:⁷

1. The new law authorized the Sallie Mae board of directors to propose a reorganization plan that could involve the restructuring of Sallie Mae (the GSE) into a subsidiary of a holding company that was authorized to create and operate other non-GSE subsidiaries (see Figure 1, above).
2. The law required the Sallie Mae board to submit the restructuring plan to Sallie Mae shareholders; upon approval of a majority of votes, the reorganization plan would go into effect.
3. The law set some limitations upon the GSE. It may purchase student loans through September 30, 2007, but its other activities such as provision of warehousing advances and letters of credit, and standby bond purchases were restricted. The GSE must be wound up no later than September 30,

⁷ The Student Loan Marketing Association Reorganization Act of 1996, Title VI of Pub. L. No. 104-208, enacted September 30, 1996. See also, Sallie Mae, Proxy Statement/Prospectus dated July 10, 1997 (Washington, DC: Sallie Mae); and John E. Dean, Saul L. Moskowitz, and Karen L. Cipriani. 1999. "Implications of the Privatization of Sallie Mae," *Journal of Public Budgeting, Accounting & Financial Management*, Vol. 11, No. 1, spring, pp. 56-80.

2008. In fact, Sallie Mae has announced that it will wind up the GSE by September 30, 2006.

4. The law also set limitations upon the non-GSE parts of the holding company and their relations with the GSE. The non-GSE parts of the holding company are prohibited from acquiring student loans until the GSE is wound up. The holding company is prohibited from acquiring an interest in a depository institution, with some exceptions that do apply to Sallie Mae,⁸ and must operate on an arm's length basis from the GSE, except that personnel may be shared. Also, only the GSE may use the name "Student Loan Marketing Association"; the non-GSE holding company may use the name "Sallie Mae" as a trademark and service mark, except in connection with an offering of debt or other securities.
5. The law strengthens the safety and soundness provisions applicable to the GSE.
6. The law requires the non-GSE holding company to issue to the District of Columbia Financial Responsibility and Management Assistance Authority stock warrants in an amount equal to one-percent of the share value of the GSE just before the date of enactment of the law.
7. The law confers upon the Secretary of Education certain authority, e.g., to approve termination of the GSE before September 30, 2008, and to require the holding company or any non-GSE part of the holding company to serve as a lender of last resort; and
8. The law applies a sunset date to the GSE; even if shareholders do not approve the reorganization, the GSE shall dissolve and its separate existence shall terminate by July 1, 2013.

It turns out that the mechanics of privatization were not difficult. The law permitted the board of directors of Sallie Mae to propose a simple reorganization to convert the GSE into a subsidiary of a non-GSE holding company. Also, the final winding up of the GSE's debt obligations is to be done through a transaction known as a defeasance. Under this transaction, the organization irrevocably transfers sufficient funds or Treasury obligations to a trust and, under the trust agreement assures that the trustee will make full repayment of all liabilities on outstanding GSE obligations. Under GAAP rules, a defeasance transaction permits the organization to remove all of the defeased liabilities from its balance sheet.

On July 31, 1997, Sallie Mae shareholders voted overwhelmingly to reorganize the company into a completely new entity according to the reorganization plan. Sallie Mae also underwent a hard-fought proxy battle that resulted in the installation of new management for the reorganized institution. The new managers were led by former senior Sallie Mae officials who objected to the business plans put forth by the incumbents.

As a non-GSE, the new holding company can enter and leave lines of business without regard to the confines of a special-purpose GSE charter act. The company has

⁸ The nonaffiliation provisions are found in separate laws, the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1828(s) and The Federal Credit Union Act, 12 U.S.C. Sec. 1781(e).

engaged in a number of acquisitions, including the purchase of two major firms, Nellie Mae, Inc., a major student loan origination company, and the USA Group, a major processor of student loan guarantees. Sallie Mae now has achieved vertical integration of its student loan business. The non-GSE also announced that it would team up with an insurance company to offer an array of insurance plans, including auto, home, life and renters' insurance policies, annuities, prepaid legal services, and home warranty plans, to its five million student loan borrowers.⁹ The holding company has changed its name to SLM Corporation. It earned \$ 792 million in net income in 2002. The company originated \$ 11.9 billion in student loans that year, including \$ 9.5 billion in federally guaranteed loans, amounting to 29% of that market that year, and processed \$ 10.7 billion in student loan guarantees, amounting to 33% of that market.¹⁰

It is interesting to observe transactions between the GSE subsidiary and the parent holding company. SLM Corporation reports that, as would be expected, the majority of its student loan purchases and on-balance sheet financing of student loans occurs through the GSE, financed either by agency-status debt obligations or securitization. In 1997 the parent holding company transferred all personnel and some assets from the GSE to the parent company or to other non-GSE affiliates. The holding company manages operations of the GSE through a management services agreement. The holding company also engages in a number of other transactions with its GSE subsidiary.¹¹

What was the impact on the market of removing government sponsorship from Sallie Mae? Some knowledgeable observers have concluded that,

“...the privatization of Sallie Mae had little or no impact on the market which it served, raising the issue of whether Sallie Mae privatization should have been enacted several years earlier. Thusfar, Sallie Mae's experience in the student loan marketplace immediately following the transition to privatization suggests that the company's GSE status was not crucial to liquidity in the student loan marketplace....[This] raises the issue of whether the Sallie Mae GSE was allowed to retain its GSE status for long after it was serving a necessary or even beneficial function in the student loan marketplace.”¹²

⁹ Albert B. Crenshaw, “Sallie Mae to Acquire Student-Loan Rival,” *The Washington Post*, June 16, 2000, p. E-1.

¹⁰ SLM Corporation, Form 10-K for the fiscal year ended December 31, 2002, pp. 13-14.

¹¹ *Ibid.* pp. 13-14 and 45-46.

¹² John E. Dean, et al. “Implications of the Privatization of Sallie Mae,” p. 68

FIGURE 1

Restructuring as a Holding Company

