

Combest Hyde Pallone Unsoeld Waxman Wolpe
 Condit Inhofe Panetta Valentine Weber Wyden
 Conyers Jacobs Parker Vander Jagt Weiss Wylie
 Cooper James Pastor Vento Weldon Yates
 Costello Jefferson Patterson Volkmer Wheat Yatron
 Cox (CA) Johnson (CT) Paxon Vucanovich Williams Young (AK)
 Cox (IL) Johnson (SD) Payne (NJ) Walsh Wilson Young (FL)
 Coyne Johnston Payne (VA) Pease Wise
 Cramer Jones (GA) Pease Wolf
 Crane Jones (NC) Pelosi
 Cunningham Jontz Penny
 Darden Kanjorski Perkins
 Davis Kaptur Peterson (MN)
 de la Garza Kasich Pickett
 DeFazio Kennedy Pickle
 DeLauro Kennelly Porter
 Dellums Kildee Poshard
 Derrick Kleczka Price
 Dickinson Klug Pursell
 Dicks Kolbe Quillen
 Dingell Kolter Rahall
 Dixon Kopetski Ramstad
 Dooley Kostmayer Rangel
 Dorgan (ND) Kyl Ravenel
 Dornan (CA) LaFalce Ray
 Downey Reed
 Dreier Lagomarsino Regula
 Duncan Lancaster Rhodes
 Durbin Lantos Richardsson
 Dwyer LaRocco Ridge
 Dymally Laughlin Riggs
 Early Leach Rinaldo
 Eckart Lehman (CA) Ritter
 Edwards (CA) Lehman (FL) Roberts
 Edwards (OK) Lent Roe
 Edwards (TX) Levin (MI) Roemer
 Emerson Lewis (CA) Rogers
 Engel Lewis (FL) Rohrabacher
 English Lewis (GA) Ros-Lehtinen
 Erdreich Lightfoot Rose
 Espy Lipinski Rostenkowski
 Evans Livingston Roth
 Fascell Lloyd Rowland
 Fawell Long Roybal
 Fazio Lowery (CA) Sabo
 Feighan Lowey (NY) Sanders
 Fields Machtley Sangmeister
 Fish Manton Santorum
 Flake Markey Sarpaluis
 Foglietta Marlenee Savage
 Ford (MI) Martin Sawyer
 Ford (TN) Matsui Saxton
 Frank (MA) Mavroules Schaefer
 Franks (CT) Mazzoli Scheuer
 Frost McCandless Schiff
 Gallegly McCallum Schroeder
 Gallo McCurdy Schulze
 Gaydos McDade Schumer
 Gejdenson McDermott Serrano
 Gephardt McEwen Sharp
 Geren McGrath Shays
 Gibbons McHugh Shuster
 Gilchrist McMillen (MD) Sikorski
 Gillmor McNulty Sisisky
 Gilman Meyers Skaggs
 Glickman Mfume Skeen
 Gonzalez Michel Skelton
 Goodling Miller (CA) Slattery
 Gordon Miller (OH) Slaughter
 Grandy Mineta Smith (FL)
 Green Mink Smith (IA)
 Guarini Moakley Smith (NJ)
 Gunderson Molinari Smith (OR)
 Hall (OH) Mollohan Smith (TX)
 Hall (TX) Montgomery Snowe
 Hamilton Moody Solarz
 Hammerschmidt Moorhead Solomon
 Hancock Moran Spence
 Hansen Morella Spratt
 Harris Murphy Staggers
 Hastert Murtha Stallings
 Hatcher Myers Stenholm
 Hayes (IL) Nagle Stokes
 Hayes (LA) Natcher Studts
 Hefner Neal (MA) Stump
 Herger Neal (NC) Sundquist
 Hertel Nichols Swett
 Hoagland Nowak Swift
 Hobson Nussle Synar
 Hochbrueckner Oakar Tallon
 Holloway Oberstar Tanner
 Horn Obey Tauzin
 Horton Olin Taylor (MS)
 Houghton Olver Thomas (CA)
 Hoyer Ortiz Thomas (WY)
 Hubbard Orton Thornton
 Huckaby Owens (NY) Torres
 Hughes Owens (UT) Towns
 Hunter Oxley Traficant
 Hutto Packard Traxler

Unsoeld Waxman Wolpe
 Valentine Weber Wyden
 Vander Jagt Weiss Wylie
 Vento Weldon Yates
 Volkmer Wheat Yatron
 Vucanovich Williams Young (AK)
 Walsh Wilson Young (FL)
 Washington Wise
 Waters Wolf

NOT VOTING—21

Arney Jenkins Peterson (FL)
 AuCoin Levine (CA) Russo
 Browder Martinez Stark
 Clay McCloskey Thomas (GA)
 Dannemeyer Miller (WA) Torricelli
 Donnelly Morrison Visclosky
 Ewing Mrazek Whitten

So the amendment was not agreed to.
 After some further time,

35.8 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment submitted by Mr. GRADISON:

—Page 233, beginning on line 6, strike out all of Section 439 through page 251, line 15 and insert the following new section.

SEC. 439. STUDENT LOAN MARKETING ASSOCIATION FINANCIAL SAFETY AND SOUNDNESS.

(a) **SHORT TITLE.**—This section may be cited as the “Government-Sponsored Education Association Financial Safety and Soundness Act of 1992”.

(b) **CONGRESSIONAL FINDINGS.**—The Congress finds that—

(1) the Student Loan Marketing Association has important public missions that are reflected in the statutes establishing the Association;

(2) because the continued ability of the Student Loan Marketing Association to accomplish its public missions is important to providing education in the United States, more effective Federal regulation is needed to reduce the risk of failure of the Association;

(3) the Student Loan Marketing Association currently poses minimal financial risk to the Federal Government;

(4) the Student Loan Marketing Association is not backed by the full faith and credit of the United States;

(5) the entity regulating the Student Loan Marketing Association should have sufficient autonomy from the Association and special interest groups; and

(6) the entity regulating the Student Loan Marketing Association should have the authority to establish capital standards, require financial disclosure, prescribe adequate standards for books and records and other internal controls, conduct examinations when necessary, and enforce compliance with the standards and rules that it establishes.

(c) **DEFINITIONS.**—For purposes of this Act:

(1) **COMPENSATION.**—The term “compensation” means any payment of money or the provision of any other thing of current or potential value in connection with employment.

(2) **CORE CAPITAL.**—The term “core capital” means, with respect to the Student Loan Marketing Association, the sum of the following (as determined in accordance with generally accepted accounting principles):

(A) The par value of outstanding common stock.

(B) The par value of outstanding preferred stock.

(C) Paid-in capital.

(D) Retained earnings.

(3) **DIRECTOR.**—The term “Director” means the Director of the Office of SLMA Market Examination and Oversight of the Department of Treasury.

(4) **ASSOCIATION.**—The term “Association” means the Student Loan Marketing Associa-

tion and any subsidiary thereof, other than the College Construction Loan Insurance Association.

(5) **EXECUTIVE OFFICER.**—The term “executive officer” means, with respect to the Association, the chief executive officer of the Association, chief financial officer of the Association, president of the Association, vice chairman of the Association, any executive vice president of the Association, and any senior vice president of the Association in charge of a principal business unit, division, or function.

(6) **OFFICE.**—The term “Office” means the Office of SIMA Market Examination and Oversight of the Department of Treasury.

(7) **REGULATORY CAPITAL.**—The term “regulatory capital” means, with respect to the Association—

(A) the core capital of the Association plus any allowances for losses (including any allowance for losses related to student loan purchases); plus

(B) any other amounts from sources of funds available to absorb losses incurred by the Association, that the Director by regulation determines are appropriate to include in determining regulatory capital.

(8) **SECRETARY.**—The term “Secretary” means the Secretary of Treasury.

(9) **CAPITAL DISTRIBUTION.**—

(A) **IN GENERAL.**—The term “Capital Distribution” means—

(i) a dividend or other distribution in cash or in kind made with respect to any share or other ownership interest of the Association, except a dividend consisting only of shares of the Association;

(ii) a payment made by the Association to repurchase, redeem, retire, or otherwise acquire any of its shares, including any extension of credit made to finance an acquisition of such share, or

(iii) a transaction that the Director determines by an order or regulation to be in substance the distribution of capital.

(B) **EXCEPTION.**—A payment made by the Association to repurchase its shares for the purpose of fulfilling the Association’s obligation under an existing employee stock ownership plan that is a qualified plan under Section 401 of the Internal Revenue Code shall not be considered a capital distribution.

(d) **ESTABLISHMENT OF OFFICE OF SLMA MARKET EXAMINATION AND OVERSIGHT.**—Effective January 1, 1993, there shall be established in the Department of Treasury the Office of SLM Market Examination and Oversight, which shall be an office within the Department.

(e) **DIRECTOR.**—The Office shall be under the management of a full-time Director, who shall be selected by and report to the Secretary. An individual may not be selected as Director if the individual has served as an executive officer of the Association at any time during the 5-year period ending upon the selection of such individual.

(f) **AUTHORITY OF DIRECTOR.**—

(1) **EXCLUSIVE AUTHORITY.**—The Director shall make determinations and take actions that the Director determines necessary with respect to the Association regarding—

(A) examinations of the Association under subsection (z);

(B) decisions to appoint conservators for the Association;

(C) enforcement actions under this Act, including any final decisions in contested administrative enforcement proceedings; and

(D) approval of capital distributions by the Association under section 439(f) of the Higher Education Act.

The authority of the Director under this paragraph shall not be subject to the review or approval of the Secretary.

(2) **AUTHORITY SUBJECT TO APPROVAL OF SECRETARY.**—Any authority of the Director

not referred to in paragraph (1), including the authority to issue rules and regulations, shall be subject to the review and approval of the Secretary, but the Secretary may delegate the authority to review to other officers and employees of the Department of Treasury.

(3) DELEGATION OF AUTHORITY.—The Director may delegate to employees of the Office any of the functions, powers, and duties of the Director, as the Director considers appropriate.

(g) PERSONNEL.—The Director shall hire such employees of the Office as the Director considers necessary to carry out the functions of the Director and the Office.

(h) FUNDING.—

(1) ASSESSMENTS AND FEES.—The Director may establish and collect from the Association such assessments, fees, and other charges that the Director considers necessary so that the amount collected is an amount sufficient to provide for reasonable costs and expenses of the Office of SLMA Market Examination and Oversight, including the expenses of any examinations under subsection (z).

(2) FUND.—There is established in the Treasury of the United States a fund to be known as the SLMA Market Examination and Oversight Fund. Any assessments, fees, and charges collected pursuant to paragraph (1) shall be deposited in the Fund. Amounts in the Fund shall be available, to the extent provided in appropriations Acts—

(A) to carry out the responsibilities of the Director relating to the Association; and

(B) for necessary administrative and non-administrative expenses of the Office to carry out the purposes of this Act.

(i) ANNUAL REPORTS.—The Director shall submit to the Congress, not later than April 15 of each year, a written report, which shall include—

(1) a description of the actions taken, and being undertaken, by the Director to carry out this Act;

(2) a description of the financial safety and soundness of the Association, including the results and conclusions of the annual examinations of the Association conducted under subsection (z)(1)(A); and

(3) any recommendations for legislation to enhance the financial safety and soundness of the Association.

(j) DISCLOSURE.—The Director of the Office and any conservators and examiners under this Act, shall each submit to the Secretary of Treasury annually during such individual's tenure in such position—

(1) a statement disclosing personal income and finances, which shall be consistent with Federal financial disclosure laws relating to Federal employees; and

(2) a statement certifying that no conflict of interest exists with the position occupied by such individual and describing any circumstance which may reasonably be perceived as a conflict of interest, which shall be consistent with Federal laws relating to conflict of interest.

(k) INFORMATION, RECORDS, AND MEETINGS.—For purposes of subchapter II of chapter 5 of title 5, United States Code (5 U.S.C. 551 et seq.), the Office shall be considered an agency responsible for the regulation or supervision of financial institutions.

(1) REGULATIONS AND ORDERS.—Subject to the approval of the Secretary (as provided in subsection (f)(2)), the Director shall issue any regulations and orders necessary to carry out the duties of the Director and to carry out this Act. The regulations under this subsection shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (b)(B) and (d)(3) of such section).

(m) AMENDMENTS TO THE HIGHER EDUCATION ACT.—Section 439 of the Higher Education Act of 1965 (20 U.S.C. 1087-2) is amended by—

(1) amending subsection (c) to read as follows:

“(c) BOARD OF DIRECTORS.—

“(1) COMPOSITION OF BOARD; CHAIRMAN.—The Association shall have a Board of Directors which shall consist of 21 members, 7 of whom shall be appointed by the President of the United States 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). Commencing with the annual shareholders meeting to be held in 1993—

“(A) 7 of the elected directors shall be affiliated with an eligible institution, and

“(B) 7 of the elected directors shall be affiliated with an eligible lender.

The President shall designate one 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 an eligible institution’ or a director ‘affiliated with an eligible lender’ mean 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 semi-annually. 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.”

(2) amending subsection (f) to read as follows:

“(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 the Board from time to time. Each share of voting common stock shall be entitled to 1 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 from time to time. Any voting common stock issue shall

be fully transferable, except that, as to the Association, it shall be transferred only on the books of the Association.

“(3) DIVIDENDS.—

“(A) To the extent that net income is earned and realized, subject to subsection (g)(2), dividends may be declared on voting common stock by the Board. Such dividends as may be declared by the Board 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. All dividends shall be charged against the general surplus account of the Association.

“(B) The Association may not make any capital distribution that would decrease the regulatory capital of the Association (as such term is defined in subsection (c) of the Government-Sponsored Education Association Financial Safety and Soundness Act of 1992) to an amount less than the risk-based capital level for the Association established under subsection (p) of such Act or that would decrease the core capital of the Association (as such term is defined in such subsection (c)) to an amount less than the minimum capital level for the Association established under subsection (q) of such Act, without prior written approval of the payment by the Director of the Office of SLMA Market Examination and Oversight of the Department of Treasury.

“(C) The Director of the Office of SLMA Market Examination and Oversight may require the Association to submit a report to the Director after the declaration of any dividend by the Association and before the payment of the dividend. The report shall be made in such form and under such circumstances and shall contain such information as the Director shall require.”

“(4) SINGLE CLASS OF VOTING COMMON STOCK.—As of the effective date of the Student Loan Marketing Association Financial Safety and Soundness Act 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.”

(3) by striking paragraph (h)(2) and inserting the following new paragraph:

“(2) DEBT.—The Association shall insert appropriate language in all of the securities issued by it clearly indicating that such securities, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the Association.”

(4) in paragraph (i)(8) by inserting a period after “thereof” and inserting the following new sentence: Salaries shall be set at such levels as the Board of Directors determines reasonable and comparable with compensation for employment in positions in other similar businesses (including other major financial services companies) involving similar duties and responsibilities, except that a significant portion of potential compensation of all executive officers of the Association shall be based on the performance of the Association”; and by adding at the end the following new paragraph:

“(10)(A) Not later than June 30, 1993, and annually thereafter, the Association shall submit a report to the Congress on (i) the

comparability of the compensation policies of the Association with the compensation policies of other similar businesses, (ii) in the aggregate, the percentage of total cash compensation and payments under employee benefit plans (which shall be defined in a manner consistent with the Association's proxy statement for the annual meeting of shareholders for the preceding year) earned by executive officers of the Association during the preceding year that was based on the Association's performance, and (iii) the comparability of the Association's financial performance with the performance of other similar businesses. The report shall include a copy of the Association's proxy statement for the annual meeting of shareholders for the preceding year.

"(B) After the date of the enactment of the Government-Sponsored Education Association Financial Safety and Soundness Act of 1992, the Association may not enter into any agreement or contract to provide any payment of money or other thing of current or potential value in connection with the termination of employment of any executive officer of the Association, unless such agreement or contract is approved in advance by the Secretary of Treasury. The Secretary may not approve any such agreement or contract unless the Secretary determines that the benefits provided under the agreement or contract are comparable to benefits under such agreements for officers of other public and private entities involved in financial services and education interests who have comparable duties and responsibilities. For purposes of this subparagraph, any renegotiation, amendment, or change after such date of enactment to any such agreement or contract entered into on or before such date of enactment shall be considered entering into an agreement or contract.

"(C) For purposes of this paragraph, the term 'executive officer' has the meaning given the term in subsection (c) of the Government-Sponsored Education Association Financial Safety and Soundness Act of 1992."

(5) in subsection (j) by adding onto the end thereof the following new sentence: "The programs, activities, receipts, expenditures, and financial transactions of the Association 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."

(6) by adding the following new subsection:

"(r) QUARTERLY REPORTS—

"(1) TIMING.—The Association shall submit to the Director of the Office of SLMA Market Examination and Oversight of the Department of Treasury quarterly reports of the financial condition of the Association which shall be in such form, contain such information, and be submitted on such dates as the Director of the Office of SLMA Market Examination and Oversight shall require.

"(2) Each report of condition shall contain a declaration by the president, vice president, treasurer, or any other officer designated by the Board of Directors of the Association to make such declaration, that the report is true and correct to the best of such officer's knowledge and belief.

"(3) The Director of the Office of SIMA Market Examination and Oversight may require the Association to submit additional reports of financial condition, which shall be in such form, contain such information, and be submitted on such dates as the Director may require. The Director may also require the Association to submit special reports whenever, in the judgment of the Director, such reports are necessary to carry out the purposes of the Government-Sponsored Education Association Financial Safety and Soundness Act of 1992. The Director may not require the inclusion in any such special re-

port of any information that is not reasonably obtainable by the Association. The Director shall notify the Association, a reasonable period in advance of the date for submission of any report, of any specific information to be contained in the report and the date for the submission of the report."

(7) EFFECTIVE DATE.—Except as otherwise provided in this subsection and the amendments made by this subsection, the amendments made by this subsection shall take effect on January 1, 1993.

(n) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—

(1) DIRECTOR AT LEVEL II OF EXECUTIVE SCHEDULE.—Section 5313 of title 5, United States Code, is amended by inserting at the end the following new item: "Director of the Office of SIMA Market Examination and Oversight, Department of Treasury."

(2) DEFINITION OF AGENCY.—Section 3132(a)(1)(D) of title 5, United States Code, is amended by inserting "the Office of SIMA Market Examination and Oversight of the Department of Treasury," after "Farm Credit Administration."

(o) IMPLEMENTATION.—

(1) IN GENERAL.—The Secretary of Treasury and the Director of the Office of SIMA Market Examination and Oversight of the Department of Treasury, as appropriate, shall issue final regulations providing for the implementation of the provisions of this Act and the amendments made by this Act not later than the expiration of the 18-month period beginning on the date of the enactment of this Act. Such regulations shall clearly delineate the responsibilities and authority of the Secretary and the Director pursuant to the provisions of and amendments made by this Act. Any regulations issued by the Director pursuant to this subsection shall be issued under the authority provided in subsection (1).

(2) NOTICE AND COMMENT.—The regulations under this subsection shall be issued after notice and opportunity for public comment pursuant to the provisions of section 533 of title 5, United States Code (notwithstanding subsections (b)(B) and (d)(3) of such section).

(p) RISK BASED CAPITAL LEVEL.—

(1) RISK-BASED CAPITAL TEST.—The Director shall, by regulation, establish a risk-based capital test under this subsection for the Association. When applied to the Association, the risk-based capital test shall determine the amount of regulatory capital for the Association that is sufficient for the Association to maintain positive capital during a 10-year period in which both of the following circumstances occur:

(A) CREDIT RISK.—With respect to student loans owed by the Association, other assets or obligations, and other activities of the Association related to credit risk (including any off-balance sheet obligations), the Director will establish risk-based capital requirements based on the expected losses of the various classes of financial assets and obligations occurring on a nationwide basis at a rate that is reasonably related to the worst actual two-year regional (contiguous area of the United States containing an aggregate of not less than 5 percent of the total population of the United States) experience for such financial instruments and activities.

(B) Interest rate risk.—Interest rates on Treasury obligations of varying terms increase or decrease over the first 12 months of such 10-year period by not more than the lesser of (i) 50 percent (with respect to the average interest rates on such obligations during the 12-month period preceding the 10-year period), or (ii) 600 basis points, and remain at such level for the remainder of the period. This subparagraph may not be construed to require the Director to determine interest rate risk under this subparagraph based on the interest rates for various long-

term and short-term obligations all increasing or all decreasing concurrently.

(2) CONSIDERATIONS.—In establishing the risk-based capital test under paragraph (1), the Director shall take into account appropriate distinctions based on various types of loans, varying terms of Treasury obligations, and any other factors the Director considers appropriate.

(3) RISK-BASED CAPITAL LEVEL.—For purposes of this Act, the risk-based capital level for the Association shall be equal to the sum of the following amounts:

(A) CREDIT AND INTEREST RATE RISK.—The amount of regulatory capital determined by applying the risk-based capital test under paragraph (1) to the Association, adjusted to account for foreign exchange risk.

(B) MANAGEMENT AND OPERATIONS.—To provide for management and operations risk, the Director shall establish a requirement of regulatory capital that is a fixed percentage of the amount of capital established under the risk-based capital test under paragraph (1).

(4) REGULATIONS.—The Director shall issue final regulations establishing the risk-based capital test under this subsection not later than the expiration of the 2-year period beginning on the date of the enactment of this Act. Such regulations shall contain specific requirements, definitions, methods, variables, and parameters used under the risk-based capital test and in implementing the test (such as loan loss severity, float income, taxes, yield curve slopes, default experience, and prepayment rates). The regulations shall be sufficiently specific to permit an individual other than the Director to apply the test in the same manner as the Director.

(5) AVAILABILITY OF MODEL.—The Director shall make copies of the statistical model or models used to implement the risk-based capital test under this subsection available for public acquisition and may charge a reasonable fee for such copies.

(q) MINIMUM CAPITAL LEVEL.—For purposes of this Act, the minimum capital level for the Association shall be an amount of core capital equal to the sum of—

(1) 2.0 percent of the aggregate on-balance sheet assets of the Association, as determined in accordance with generally accepted accounting principles; and

(2) 0.4 percent of the aggregate off-balance sheet obligations of the Association, as determined in accordance with generally accepted accounting principles.

(r) CRITICAL CAPITAL LEVEL.—For purposes of this Act, the critical capital level for the Association shall be an amount of core capital equal to the sum of—

(1) 1.0 percent of the aggregate on-balance sheet assets of the Association, as determined in accordance with generally accepted accounting principles; and

(2) 0.2 percent of the aggregate off-balance sheet obligations of the Association, as determined in accordance with generally accepted accounting principles.

(s) ENFORCEMENT LEVELS.—

(1) IN GENERAL.—The Director shall classify the Association, for purposes of this Act, according to the following enforcement levels:

(A) LEVEL I.—The Association shall be classified as within level I if it—

(i) maintains an amount of regulatory capital that is equal to or exceeds the risk-based capital level established for the Association under subsection (p); and

(ii) equals or exceeds the minimum capital level for the Association established under subsection (q).

(B) LEVEL II.—The Association shall be classified as within level II if—

(i) the Association—

(a) maintains an amount of regulatory capital that is less than the risk-based capital level established for the Association; and

(b) equals or exceeds the minimum capital level for the Association; or

(ii) the Association is otherwise classified within level II under paragraph (2) of this subsection.

(C) LEVEL III.—The Association shall be classified as within level III if—

(i) the Association—

(a) does not equal or exceed the minimum capital level for the Association; and

(b) equals or exceeds the critical capital level for the Association established under subsection (r); or

(ii) the Association is otherwise classified within level III under paragraph (2) of this subsection.

(D) LEVEL IV.—The Association shall be classified as within level IV if the Association—

(i) does not equal or exceed the critical capital level for the Association; or

(ii) is otherwise classified level IV under paragraph (2) of this subsection.

(2) DISCRETIONARY CLASSIFICATION.—If at any time the Director determines in writing that the Association is taking any action not approved by the Director that could result in a rapid depletion of core capital or that the value of the loans held by the Association has decreased significantly, the Director may classify the Association—

(A) as within level II, if the Association is otherwise within level I;

(B) as within level III, if the Association is otherwise within level II; or

(C) as within level IV, if the Association is otherwise within level III.

(3) QUARTERLY DETERMINATION.—The Director shall determine the classification of the Association for purposes of this Act on not less than a quarterly basis (and as appropriate under paragraph (2)). The first such determination shall be made for the quarter ending March 31, 1993.

(4) NOTICE.—Upon determining under paragraph (2) or (3) that the Association is within level II or III, the Director shall provide written notice to the Congress and to the Association—

(A) that the Association is within such level;

(B) that the Association is subject to the provisions of subsection (t) or (u), as applicable; and

(C) stating the reasons for the classification of the Association within such level.

(5) IMPLEMENTATION.—Notwithstanding paragraph (1)(A), during the period beginning on the date of the enactment of this Act and ending upon the effective date of subsection (t) (as provided in paragraph (t)(4)), the Association shall be classified as within level I if the Association equals or exceeds the applicable minimum capital level for the Association under subsection (q).

(t) MANDATORY SUPERVISORY ACTIONS APPLICABLE TO THE ASSOCIATION WITHIN LEVEL II.—

(1) CAPITAL RESTORATION PLAN.—The Association within level II shall, within the time period provided in subsection (x)(2) and in consultation with the Director, submit to the Director a capital restoration plan that complies with subsection (x) and, after approval, carry out the plan.

(2) RESTRICTION ON CAPITAL DISTRIBUTIONS.—The Association within level II may not make any capital distribution that would result in the Association being reclassified as within level III or IV.

(3) RECLASSIFICATION FROM LEVEL II TO LEVEL III.—The Director shall immediately reclassify the Association within level II as within level III (and the Association shall be subject to the provisions of subsection (u), if—

(A) the Association does not submit a capital restoration plan that is substantially in compliance with subsection (x) within the

applicable period or the Director does not approve the capital restoration plan submitted by the Association; or

(B) the Director determines that the Association has failed to make, in good faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule for the plan approved by the Director.

(4) EFFECTIVE DATE.—This subsection shall take effect upon the expiration of the 1-year period beginning on the date of the effectiveness of the regulations issued under subsection (p) establishing the risk-based capital test.

(u) SUPERVISORY ACTIONS APPLICABLE TO THE ASSOCIATION WITHIN LEVEL III.—

(1) MANDATORY SUPERVISORY ACTIONS.—

(A) CAPITAL RESTORATION PLAN.—The Association within level III shall, within the time period provided in subsection (x)(2) and in consultation with the Director, submit to the Director a capital restoration plan that complies with subsection (x) and, after approval, carry out the plan.

(B) RESTRICTIONS ON CAPITAL DISTRIBUTIONS.—

(i) PRIOR APPROVAL.—The Association within level III may not make any capital distribution that would result in the Association being reclassified as within level IV. An Association within level III may make any other capital distribution only if the Director approves the payment before the payment.

(ii) STANDARD FOR APPROVAL.—The Director may approve a capital distribution by the Association within level III only if the Director determines that the payment (a) will enhance the ability of the Association to meet the risk-based capital level and the minimum capital level for the Association promptly, (b) will contribute to the long-term safety and soundness of the Association, or (c) is otherwise in the public interest.

(C) APPROVAL OF ACTIVITIES.—The Association within level III may undertake an activity subject to the approval of the Secretary of Education or the Secretary of the Treasury under the Higher Education Act only with the additional approval of the Director.

(D) RECLASSIFICATION FROM LEVEL III TO LEVEL IV.—The Director shall immediately reclassify the Association within level III as within level IV (and the Association shall be subject to the provisions of subsection (v)), if—

(i) the Association does not submit a capital restoration plan that is substantially in compliance with subsection (x) within the applicable period or the Director does not approve the capital restoration plan submitted by the Association; or

(ii) the Director determines that the Association has failed to make, in good faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule for the plan approved by the Director.

(2) DISCRETIONARY SUPERVISORY ACTIONS.—In addition to any other actions taken by the Director (including actions under paragraph (1)), the Director may, at any time, take any of the following actions with respect to the Association within level III:

(A) LIMITATION ON INCREASE IN OBLIGATIONS.—Limit any increase in, or order the reduction of, any obligations of the Association, including off-balance sheet obligations.

(B) LIMITATION ON GROWTH.—Limit or prohibit the growth of the assets of the Association or require contraction of the assets of the Association.

(C) PROHIBITION ON CAPITAL DISTRIBUTIONS.—Prohibit the Association from making any capital distribution.

(D) ACQUISITION OF NEW CAPITAL.—Require the Association to acquire new capital in

any form and in any amount sufficient to provide for the reclassification of the Association as within level II.

(E) RESTRICTION OF ACTIVITIES.—Require the Association to terminate, reduce, or modify any activity that the Director determines creates excessive risk to the Association.

(F) CONSERVATORSHIP.—Appoint a conservator for the Association pursuant to subsection (w).

(3) EFFECTIVE DATE.—This subsection shall take effect upon the expiration of the 18-month period beginning on the date of the enactment of this Act.

(v) MANDATORY APPOINTMENT OF CONSERVATOR FOR THE ASSOCIATION WITHIN LEVEL IV.—

(1) NOTICE.—Upon determining that the Association is within level IV, the Director shall provide written notice to the Congress and to the Association—

(A) that the Association is within level IV;

(B) that a conservator shall be appointed for the Association pursuant to this section.

(2) APPOINTMENT.—If the Director determines that the Association is within level IV, the Director shall, not later than 30 days after providing notice under paragraph (1), appoint a conservator for the Association. A conservator appointed pursuant to this subsection shall have the authority, in the discretion of the conservator, to take any actions under subsections (t) and (u) not inconsistent with the authority of the conservator and to take any other actions authorized under subsection (w).

(3) APPROVAL OF ACTIVITIES.—The conservator of any Association within level IV may undertake an activity subject to the approval of the Secretary of Education or the Secretary of the Treasury under the Higher Education Act only with the additional approval of the Director.

(4) EFFECTIVE DATE.—This subsection shall take effect on January 1, 1993.

(w) CONSERVATORSHIP.—

(1) APPOINTMENT.—

(A) DISCRETIONARY AUTHORITY.—The Director may, after providing notice under subparagraph (B), appoint a conservator for the Association upon a determination—

(i) that the Association is not likely to pay its obligations in the normal course of business;

(ii) that—

(a) the Association has incurred or is likely to incur losses that will deplete all or substantially all of its core capital; and

(b) there is no reasonable likelihood that the Association will replenish its core capital without Federal assistance;

(iii) that the Association has concealed books, papers, records, or assets of the Association that are material to the discharge of the Director's responsibilities under this Act, or has refused to submit such books, papers, records, or information regarding the affairs of the Association for inspection to the Director upon request; or

(iv) that the Association is classified within level III.

(B) NOTICE.—Upon making a determination under subparagraph (A) to appoint a conservator under this subsection for the Association, the Director shall provide written notice to the Congress and to the Association—

(i) that a conservator will be appointed for the Association under this subsection;

(ii) stating the reasons under subparagraph (A) for the appointment of the conservator; and

(iii) identifying the person, company, or governmental agency that the Director intends to appoint as conservator.

(2) JUDICIAL REVIEW.—

(A) IN GENERAL.—

(i) TIMING AND JURISDICTION.—Upon the appointment of a conservator (pursuant to this

subsection or subsection (v)), the Association may bring an action in the United States District Court for the District of Columbia, for an order requiring the Director to terminate the appointment of the conservator. The court, upon the merits, shall dismiss such action or shall direct the Director to terminate the appointment of the conservator. Such an action may be commenced only before the expiration of the 20-day period beginning upon the appointment of the conservator.

(ii) STANDARD.—A decision of the Director to appoint a conservator may be set aside under this subparagraph only if the court finds that the decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable laws.

(B) STAY.—

(i) IN GENERAL.—A conservator appointed pursuant to this subsection or subsection (v) may request that any judicial action or proceeding to which the conservator or the Association is or may become a party be stayed for a period not exceeding 45 days commencing upon the appointment of the conservator. Upon petition, the court shall grant such stay as to all parties.

(ii) FEDERAL AGENCY AS CONSERVATOR.—In any case in which the conservator appointed for the Association is a Federal agency or an officer or employee of the Federal Government, the conservator may make a request for a stay under clause (i) only with the prior consent of the Attorney General and subject to the direction and control of the Attorney General.

(C) ACTIONS AND ORDERS.—

(i) LIMITATION ON JURISDICTION.—Except as otherwise provided in this paragraph, no court may take any action regarding the removal of a conservator or otherwise restrain or affect the exercise of powers or functions of a conservator.

(ii) ENFORCEMENT OF ORDERS.—The Director, with the prior consent of the Attorney General and subject to the direction and control of the Attorney General, may apply to a court which shall have the jurisdiction to enforce an order of the Director relating to—

(a) the conservatorship and the Association in conservatorship; or

(b) restraining or affecting the exercise of authority or functions of a conservator.

(3) APPOINTMENT BY CONSENT.—Notwithstanding paragraph (1), the Director may appoint a conservator for the Association if the Association, by an affirmative vote of a majority of its board of directors or by an affirmative vote of a majority of its shareholders, consents to such appointment.

(4) EXCLUSIVE APPOINTMENT AUTHORITY AND LIMITATION.—The Director shall have exclusive authority to appoint a conservator for the Association. The Director may not appoint as a conservator for the Association the Office of SLMA Market Examination and Oversight, the Department of Treasury, the Department of Education, or any officer or employee of such Office or Departments.

(5) REPLACEMENT OF CONSERVATOR.—The Director may, without notice of hearing, replace a conservator with another conservator. Such replacement shall not affect the right of the Association under paragraph (2) to obtain judicial review of the decision of the Director to appoint a conservator.

(6) EXAMINATIONS.—The Director may examine and supervise any Association in conservatorship during the period in which the Association continues to operate as a going concern.

(7) TERMINATION.—

(A) DISCRETIONARY.—At any time the Director determines that termination of a conservatorship pursuant to an appointment under paragraph (1) is in the public interest and may safely be accomplished, the Director may terminate the conservatorship and

permit the Association to resume the transaction of its business subject to such terms, conditions, and limitations as the Director may prescribe.

(B) MANDATORY.—Except upon a determination under paragraph (1), the Director shall terminate a conservatorship pursuant to this subsection or subsection (v) upon a determination by the Director that the Association equals or exceeds the minimum capital level for the Association established under subsection (q). The Director may not impose any terms, conditions, or limitations on the transaction of business of the Association whose conservatorship is terminated under this subparagraph.

(8) POWERS AND DUTIES.—

(A) GENERAL POWERS.—A conservator shall have all the powers of the shareholders, directors, and officers of the Association under conservatorship and may operate the Association in the name of the Association, unless the Director provides otherwise.

(B) LIMITATIONS BY DIRECTOR.—A conservator shall be subject to any rules, regulations, and orders issued from time to time by the Director and, except as otherwise specifically provided in such rules, regulations, or orders or in paragraph (9), shall have the same rights and privileges and be subject to the same duties, restrictions, penalties, conditions, and limitations applicable to directors, officers, or employees of the Association.

(C) PAYMENT OF CREDITORS.—The Director may require a conservator to set aside and make available for payment to creditors any amounts that the Director determines may safely be used for such purpose. All creditors who are similarly situated shall be treated in a similar manner.

(D) COMPENSATION OF CONSERVATOR AND EMPLOYEES.—A conservator and professional employees (other than Federal employees) appointed to represent or assist the conservator may be compensated for activities conducted as conservator. Compensation may not be provided in amounts greater than the compensation paid to employees of the Federal Government or similar services, except that the Director may provide for compensation at higher rates (but not in excess of rates prevailing in the private sector), if the Director determines that compensation at higher rates is necessary in order to recruit and retain competent personnel.

(E) EXPENSES.—All expenses of a conservatorship pursuant to this subsection (including compensation under subparagraph (D)) shall be paid by the Association and shall be secured by a lien on the Association, which shall have priority over any other lien.

(9) LIABILITY PROTECTIONS.—

(A) FEDERAL AGENCIES AND EMPLOYEES.—In any case in which the conservator is a Federal agency or an officer or employee of the Federal Government, the provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to the liability of the conservator for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship.

(B) OTHER CONSERVATORS.—In any case where the conservator is not a conservator described in subparagraph (A), the conservator shall not be personally liable for damages in tort or otherwise for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship, unless such acts or omissions constitute gross negligence, including any similar conduct or any form of intentional tortious conduct.

(C) INDEMNIFICATION.—The Director, with the approval of the Attorney General, may indemnify the conservator on such terms as the Director considers appropriate.

(x) CAPITAL RESTORATION PLANS.—

(1) CONTENTS.—Each capital restoration plan submitted under this Act shall set forth a feasible plan for the Association to equal or exceed the minimum capital level for the Association and for restoring the level of regulatory capital of the Association subject to the plan to not less than the risk-based capital level for the Association. Each capital restoration plan shall—

(A) specify the level of capital the Association will achieve and maintain;

(B) describe the actions that the Association will take to equal or exceed the minimum capital level for the Association and to restore the regulatory capital of the Association to not less than the risk-based capital level for the Association;

(C) establish a schedule for completing the capital restoration plan;

(D) specify the types and levels of activities in which the Association will engage during the term of the capital restoration plan; and

(E) describe the actions that the Association will take to comply with any mandatory and discretionary requirements imposed under this Act.

(2) DEADLINES FOR SUBMISSION.—The Director shall, by regulation, establish a deadline for submission of a capital restoration plan, which may not be more than 45 days after the Association is notified in writing that a plan is required. The regulations shall provide that the Director may extend the deadline to the extent that the Director determines necessary. Any extension of the deadline shall be in writing and for a time certain.

(3) APPROVAL.—The Director shall review each capital restoration plan submitted under this subsection and, not later than 45 days after submission of the plan, approve or disapprove the plan. The Director may extend the period for approval or disapproval for any plan for a single additional 45-day period if the Director determines it necessary. The Director shall notify any Association submitting a plan in writing of the approval or disapproval for the plan (which shall include the reasons for any disapproval of the plan) and of any extension of the period for approval or disapproval. The Director shall provide by regulation for resubmission and review of any plans disapproved.

(y) JUDICIAL REVIEW OF DIRECTOR ACTION—GENERALLY.—

(1) JURISDICTION.—

(A) FILING OF PETITION.—Except as otherwise provided in this act, the Association within level I, II, or III, that is the subject of a mandatory or discretionary supervisory action taken under this Act by the Director (other than action under subsection (v), (w), (bb), (cc) or (gg)) may obtain review of the action by filing, within 10 days after receiving written notice of the Director's action, a written petition requesting that the action of the Director be modified, terminated, or set aside.

(B) PLACE FOR FILING.—A petition filed pursuant to this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit.

(2) SCOPE OF REVIEW.—An action taken by the Director under this Act (other than under subsection (v), (w), (bb), (cc) or (gg)) may be modified, terminated, or set aside only if the court finds, on the record on which the Director acted, that the action of the Director was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable laws.

(3) UNAVAILABILITY OF STAY.—The commencement of proceedings for judicial review pursuant to this subsection shall not operate as a stay of any action taken by the Director. Except with respect to any Association within level I or II that has not been reclass-

sified to level III under subsection (s)(2) or (t)(3), no court shall have jurisdiction to stay, enjoin, or otherwise delay any mandatory or discretionary supervisory enforcement action taken by the Director under this Act pending judicial review of the action.

(4) LIMITATION ON JURISDICTION.—Except as provided in this subsection, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of any action of the Director under this Act (other than action under subsection (v), (w), (bb), (cc), or (gg)) or to review, modify, suspend, terminate, or set aside such action.

(z) EXAMINATIONS.—

(1) TIMING.—

(A) ANNUAL EXAMINATION.—The Director shall annually conduct an examination under this subsection of the Association to determine the condition of the Association for the purpose of ensuring its financial safety and soundness.

(B) OTHER EXAMINATIONS.—Whenever the Director determines that an examination is necessary to determine the condition of the Association for the purpose of ensuring its financial safety and soundness the Director may conduct an examination under this subsection.

(2) EXAMINERS.—The Director shall appoint examiners to conduct examinations of the Association under this subsection.

(3) TECHNICAL EXPERTS.—The Director may obtain the services of any technical experts the Director considers necessary and appropriate to provide temporary technical assistance relating to examinations to the Director and officers and employees of the Office of SLMA Market Examination and Oversight. The Director shall describe, in the public record of each examination, the nature and extent of any such temporary technical assistance.

(4) OATHS, EVIDENCE, SUBPOENA POWERS.—In connection with examinations under this subsection, the Director may—

(A) administer oaths and affirmations;

(B) take and preserve testimony under oath; and

(C) issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

The attendance of witnesses and the production of evidence may be required from any place within any State at any designated place where a hearing relating to an examination is conducted.

(5) SECOND EXAMINATION BY GAO.—Upon a determination by the Director that an examination of the Association is necessary under paragraph (1)(B), the Comptroller General shall conduct an examination of the Association solely to provide an independent determination regarding the safety and soundness of the Association. The examination shall be conducted at a time and in a manner that results in minimal disruption to the normal business activities of the Association. The Comptroller General may obtain the services of technical experts in the same manner as the Director may obtain such services under paragraph (3), except that any entity that assists the Director in examining the Association may not concurrently assist the Comptroller General to examine the Association under this subsection.

(aa) SAFE HARBOR.—

(1) VOLUNTARY RATINGS.—Upon request from the Association, the Director shall contract with two nationally recognized statistical rating organizations—

(A) to assess the likelihood that the Association might not be able to meet its future obligations from its own resources and to express that likelihood as a traditional credit rating; and

(B) to review the rating of the Association for one year from the effective date of the rating.

(2) QUALIFICATION FOR SAFE HARBOR.—

(A) DETERMINATION BY DIRECTOR.—If, after receiving a rating from each statistical rating organization described in paragraph (1), the Director determines that the Association merits the highest investment grade rating awarded by that organization, the Association shall be deemed, effective for one year following the date of the Director's determination, to meet the minimum risk-based capital levels for all relevant capital measures for purposes of subsection (s).

(B) WRITTEN FINDING REQUIRED.—If—

(i) each statistical rating organization described in paragraph (1) assigns the Association the highest investment grade rating awarded by that organization, and

(ii) the Director fails to make the determination described in subparagraph (A),

the Director shall make a written finding detailing the reasons for the Director's failure to make such determination.

(3) EARLY TERMINATION OF SAFE HARBOR.—Paragraph (2) shall cease to apply at such time as any such statistical rating organization described in paragraph (1) notifies the Director, and the Director determines, that the Association no longer merits the highest investment grade rating awarded by that organization. The Director shall promptly notify the Association that the Director has received the notice described in this paragraph.

(4) ASSESSMENTS FOR RATINGS.—The Director shall impose and collect an assessment on the Association, if it requests ratings under paragraph (1), to cover the full cost to the Federal Government of obtaining the ratings.

(5) DISCRETIONARY RATINGS.—Nothing in this subsection shall prevent the Director from contracting with any nationally recognized statistical rating organization to rate the Association at any time and for any purpose that the Director deems appropriate.

(6) DEFINITION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—For purposes of this subsection, the term "nationally recognized statistical rating organization" means 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 rates for broker-dealers.

(bb) CEASE-AND-DESIST PROCEEDINGS.—

(1) GROUNDS FOR ISSUANCE.—The Director may issue and serve upon the Association or any executive officer of the Association a notice of charges under this subsection if, in the determination of the Director, the Association or executive officer—

(A) is engaging or has engaged, or the Director has reasonable cause to believe that the Association or executive officer is about to engage, in any activity that could result in a rapid depletion of the core capital of the Association; or

(B) is violating or has violated, or the Director has reasonable cause to believe that the Association or executive officer is about to violate—

(i) any law, rule, or regulation; or

(ii) any written agreement entered into by the Association with the Director.

(2) PROCEDURE.—

(A) NOTICE OF CHARGES.—Each notice of charges shall contain a statement of the facts constituting the alleged violation or violations or the activity that could result in a rapid depletion of the core capital of the Association, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist from such violation or activity should issue against the Association or executive officer.

(B) DATE OF HEARING.—A hearing pursuant to a notice under subparagraph (A) shall be

fixed for a date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is met by the Director at the request of the Association or executive officer served.

(C) FAILURE TO APPEAR.—Unless the Association or executive officer served appears at the hearing through a duly authorized representative, the Association or executive officer shall be deemed to have consented to the issuance of the cease-and-desist order.

(D) ISSUANCE OF ORDER.—In the event of such consent, or if, upon the record made at any such hearing, the Director finds that any violation or activity specified in the notice of charges has been established, the Director may issue and serve upon the Association or executive officer an order requiring the Association or executive officer to cease and desist from any such violation or activity and to take affirmative action to correct the conditions resulting from any such violation or activity.

(3) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR ACTIVITIES.—The authority under this subsection and subsection (cc) to issue any order which requires the Association or executive officer to take affirmative action to correct or remedy any conditions resulting from any violation or activity with respect to which such order is issued includes the authority to require such Association or executive officer—

(A) to make restitution or provide reimbursement, indemnification, or guarantee against loss if the violation or activity involves a reckless disregard for the law or any applicable regulations or prior order of the Director or the Association or executive officer was unjustly enriched in connection with such violation or practice;

(B) to restrict the growth of the Association;

(C) to dispose of any asset involved;

(D) to rescind agreements or contracts;

(E) to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director); and

(F) to take such other action as the Director determines appropriate.

(4) AUTHORITY TO LIMIT ACTIVITIES.—The authority to issue an order under this subsection or subsection (cc) includes the authority to place limitations on the activities or functions of the Association or any director or executive officer of the Association.

(5) EFFECTIVE DATE.—A cease-and-desist order under this subsection shall become effective upon the expiration of the 30-day period beginning on the service of the order upon the Association or executive officer concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Director or otherwise as provided in this Act.

(cc) TEMPORARY CEASE-AND-DESIST ORDERS.—

(1) GROUNDS FOR ISSUANCE AND SCOPE.—Whenever the Director determines that any violation, threatened violation, or activity that could result in a rapid depletion of the capital of the Association, specified in the notice of charges served upon the Association or executive officer pursuant to subsection (bb)(1), or the continuation thereof, is likely—

(A) to cause insolvency of the Association, or

(B) to weaken the condition of the Association prior to the completion of the proceedings conducted pursuant to subsection (bb)(2),

the Director may issue a temporary order requiring the Association or executive officer

to cease-and-desist from any such violation or practice and to take affirmative action to prevent and remedy such insolvency or condition pending completion of such proceedings. Such order may include any requirements authorized under subsection (bb)(3).

(2) EFFECTIVE DATE.—An order issued pursuant to paragraph (1) shall become effective upon service upon the Association or executive officer and, unless set aside, limited, or suspended by a court in proceedings pursuant to paragraph (4), shall remain in effect and enforceable pending the completion of this proceedings pursuant to such notice and shall remain effective until the Director dismisses the charges specified in the notice or until superseded by a cease-and-desist order issued pursuant to subsection (bb).

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (bb)(1) specifies that the books and records of the Association served are so incomplete or inaccurate that the Director is unable, through the normal supervisory process, to determine the financial condition of the Association or the details or the purpose of any transaction or transactions that may have a material effect on the financial condition of that Association, the Director may issue a temporary order requiring—

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

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

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings pursuant to paragraph (4), shall remain in effect and enforceable until the earlier of—

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

(b) the date the Director determines, by examination or otherwise, that the books and records of the Association are accurate and reflect the financial condition of the Association.

(4) JUDICIAL REVIEW.—Within 10 days after the Association or executive officer has been served with a temporary cease-and-desist order pursuant to this subsection, the Association or executive officer may apply to the United States District Court for the District of Columbia for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the Association or executive officer under subsection (bb)(1). Such court shall have jurisdiction to issue such injunction.

(5) ENFORCEMENT BY ATTORNEY GENERAL.—In the case of violation or threatened violation of, or failure to obey, a temporary order issued pursuant to this subsection, the Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for an injunction to enforce such order. If the court finds any such violation, threatened violation, or failure to obey, the court shall issue such injunction.

(dd) HEARINGS.—

(1) VENUE AND PROCEDURE.—Any hearing under subsection (bb), (cc), or (gg)—

(A) shall be held in the Federal judicial district or in the territory in which the home office of the Association is located unless the Association consents to another place; and

(B) shall be conducted in accordance with the provisions of chapter 5 of title 5, United States Code.

(2) ISSUANCE OF ORDER.—

(A) IN GENERAL.—After any such hearing, and within 90 days after the Director has notified the parties that the case has been submitted to the Director for final decision, the Director shall render the decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this Act.

(B) MODIFICATION.—Except as provided in subsection (cc)(4), judicial review of any such order shall be exclusively as provided in subsection (ee). Unless such a petition for review is timely filed as provided in subsection (ee), and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, modify, terminate, or set aside any such order, upon such notice and in such manner as the Director considers proper. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

(ee) JUDICIAL REVIEW OF CEASE-AND-DESIST ORDERS AND CIVIL MONEY PENALTIES.—

(1) COMMENCEMENT.—Any party to a proceeding under subsection (bb) or (gg) may obtain review of any final order issued under such subsection by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. The clerk of the court shall transmit a copy of the petition to the Director.

(2) FILING OF RECORD.—Upon receiving a copy of a petition, the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

(3) JURISDICTION.—Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Director shall (except as provided in the last sentence of subsection (dd)(2)(B)) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director.

(4) REVIEW.—Review of such proceedings shall be governed by chapter 7 of title 5, United States Code.

(5) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, such court shall have the authority in any such review to order payment any penalty imposed by the Director under this Act.

(6) NO AUTOMATIC STAY.—The commencement of proceedings for judicial review under this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.

(ff) ENFORCEMENT AND JURISDICTION.—

(1) ENFORCEMENT.—The Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for the enforcement of any effective notice or order issued under this Act, and the court shall have jurisdiction and power to order and require compliance herewith.

(2) LIMITATION ON JURISDICTION.—Except as otherwise provided in this Act, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under subsection (bb) or (cc), or to review, modify, suspend, terminate, or set aside any such notice or order.

(gg) CIVIL MONEY PENALTIES.—

(1) FAILURE TO SUBMIT REPORTS.—The Director may impose a civil money penalty, in accordance with the provisions of this subsection, on any Association that fails to

make any report required under section 439(r) of the Higher Education Act within the period of time established by the Director for submission of the report (except in the case of a report submitted minimally late). The amount of the penalty, as determined by the Director, may not exceed \$5,000 per day for each day during which such failure continues.

(2) UNINTENTIONAL VIOLATIONS.—The Director may impose a civil money penalty, in accordance with the provisions of this subsection, on any Association that, without knowledge—

(A) violates any law, rule, or regulation;

(B) violates any final order or temporary order issued pursuant to subsection (bb) or (cc); or

(C) violates any written agreement between the Association and the Director.

The amount of the penalty, as determined by the Director, may not exceed \$5,000 for each day during which such violation continues.

(3) INTENTIONAL VIOLATIONS.—The Director may impose a civil money penalty, in accordance with the provisions of this subsection, on any Association that—

(A) submits to the Director any false or misleading report or information with actual knowledge of inaccuracy, deliberate ignorance of inaccuracy, or reckless disregard for accuracy; or

(B) knowingly commits any violation described in paragraph (2).

The amount of the penalty, as determined by the Director, may not exceed, for each day during which such violation, practice, or breach continues, the lesser of (i) \$1,000,000, or (ii) one percent of the total assets of the Association.

(4) PROCEDURES.—

(A) ESTABLISHMENT.—The Director shall establish standards and procedures governing the imposition of civil money penalties under paragraphs (1), (2), or (3). The standards and procedures—

(i) shall provide for the Director to make the determination to impose the penalty;

(ii) shall provide for the imposition of a penalty only after the Association has been given notice of, and opportunity for, a hearing on the record; and

(iii) may provide for review by the Director of any determination or order, or interlocutory ruling, arising from a hearing.

(B) FINAL ORDERS.—If the Association does not request a hearing within 20 days after receipt of a notice of opportunity for hearing, the imposition of a penalty shall constitute a final and unappealable determination. If the Director reviews the determination on order, the Director may affirm, modify, or reverse the determination or order, and shall state with reasonable specificity the basis upon which any such affirmation, modification, or reversal is made. If the Director does not review the determination or order within 90 days after the issuance of the determination or order, the determination or order shall be final.

(C) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under paragraph (1), (2), or (3), the Director shall give consideration to such factors as the gravity of the violation, any history of prior violations (including violations occurring before the date under paragraph (9)), the effect of the penalty on the safety and soundness of the Association, any injury to the public, any benefits received, and deterrence of future violations, and any other factors the Director may determine by regulation.

(D) REVIEW OF IMPOSITION OF PENALTY.—The determination or order of the Director imposing a penalty under paragraph (1), (2), or (3) shall not be subject to review, except as provided in subsection (ee).

(5) ACTION TO COLLECT PENALTY.—If the Association fails to comply with a determination or order of the Director imposing a civil money penalty under paragraph (1), (2), or (3), after the determination or orders is no longer subject to review as provided under paragraph (4)(A) and subsection (ee), the Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against the Association and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this paragraph, the validity and appropriateness of the determination or order of the Director imposing the penalty shall not be subject to review.

(6) SETTLEMENT BY DIRECTOR.—The Director may comprise, modify, or remit any civil money penalty which may be, or has been imposed under this subsection.

(7) AVAILABILITY OF OTHER REMEDIES.—Any civil money penalty under this subsection shall be in addition to any other available civil remedy and may be imposed whether or not the Director imposes other administrative sanctions.

(8) DEPOSIT OF PENALTIES.—The Director shall deposit any civil money penalties collected under this subsection into the general fund of the Treasury.

(9) APPLICABILITY.—This subsection shall apply only to violations under paragraphs (1), (2), and (3) occurring on or after January 1, 1993.

(hh) NOTICE OF SERVICE.—Any service required or authorized to be made by the Director under this Act may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Director may by regulation or otherwise provide.

(i) SUBPOENA AUTHORITY.—

(1) IN GENERAL.—In the course of or in connection with any administrative proceeding under this Act, the Director shall have the authority—

- (A) to administer oaths and affirmations;
(B) to take or cause to be taken depositions;
(C) to issue subpoenas and subpoenas duces tecum; and
(D) to revoke, quash, or modify subpoenas and subpoenas duces tecum issued by the Director.

(2) WITNESSES AND DOCUMENTS.—The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State at any designated place where such proceeding is being conducted.

(3) ENFORCEMENT.—The Director may request the Attorney General of the United States to bring an action in the United States district court for the judicial district in which such proceeding is being conducted, or where the witness resides or conducts business, or the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection. Such courts shall have jurisdiction and power to order and require compliance therewith.

(4) FEES AND EXPENSES.—Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this subsection by the Association may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses and fees shall be paid by the Association or from its assets.

(jj) STUDY OF IMPACT OF PRIVATIZATION OF THE ASSOCIATION.—

(1) IN GENERAL.—The Comptroller General of the United States, in consultation with the Secretary of Education and the Secretary of the Treasury, shall conduct and submit to the Congress, not later than the expiration of the 1-year period beginning on the date of the enactment of this Act, a study regarding the effect of repealing the Federal charter of the Student Loan Marketing Association and allowing the Association to continue to operate as a fully private entity.

(2) REQUIREMENTS.—In evaluating the effect of such action, the study shall particularly examine the impact on—

- (A) the availability and supply of student loans;
(B) the availability of financing for student loans and the interest rates for such loans in the secondary markets;
(C) the size, liquidity, and stability of the secondary market for student loans; and
(D) the overall banking and financial system.

The study shall also examine the direct and indirect monetary benefits that accrue to the Student Loan Marketing Association from its quasi-governmental status.

(3) INFORMATION.—The Student Loan Marketing Association shall provide full and prompt access to the Comptroller General, the Secretary of Education and the Secretary of the Treasury to any books, records, and other information requested for the purposes of conducting the study under this subsection.

It was decided in the { Yeas 181
negative { Nays 232

35.9 [Roll No. 57]
AYES—181

- Allard Fields Lloyd
Allen Fish McCollum
Andrews (TX) Franks (CT) McCreery
Archer Gallegly McCurdy
Atkins Gallo McDermott
Bacchus Gekas McGrath
Baker Geren McMullan (NC)
Ballenger Gibbons Meyers
Barnard Gillmor Michel
Barton Glickman Montgomery
Bateman Gradison Moorhead
Beilenson Green Neal (NC)
Bennett Guarini Nussle
Bereuter Hall (TX) Olin
Billbray Hamilton Orton
Billrakis Hancock Oxley
Biley Hansen Packard
Boucher Harris Parker
Browder Hastert Paxon
Byron Hayes (LA) Payne (VA)
Callahan Hefley Pease
Campbell (CA) Hefner Penny
Cardin Henry Peterson (MN)
Carper Herger Petri
Chandler Hoagland Pickle
Chapman Hobson Porter
Clinger Hochbrueckner Pursell
Coble Holloway Ramstad
Coleman (TX) Houghton Ray
Combest Huckaby Regula
Condit Hyde Rhodes
Cooper Inhofe Richardson
Coughlin Ireland Rinaldo
Cox (CA) Jacobs Ritter
Cramer James Rogers
Crane Johnson (SD) Rohrabacher
Cunningham Johnston Rostenkowski
DeLauro Jontz Roth
Dickinson Kaptur Roukema
Doolittle Kasich Rowland
Dorgan (ND) Kennelly Sarpalius
Dornan (CA) Klug Saxton
Dreier Kolbe Schaefer
Duncan Kopetski Schiff
Durbin Kyl Schroeder
Dwyer Lagomarsino Schumer
Eckart Lancaster Sensenbrenner
Edwards (TX) Leach Sharp
English Lent Shaw
Erdreich Lewis (FL) Shays
Ewing Lightfoot Shuster
Fawell Livingston Skaggs

- Skeen
Slattery
Smith (NJ)
Smith (TX)
Spence
Spratt
Stallings
Stearns
Stenholm
Stump
Tanner
Tauzin
Taylor (MS)
Thomas (CA)
Torrice
Upton
Valentine
Visclosky

NOES—232

- Abercrombie Goss Pallone
Ackerman Gunderson Panetta
Alexander Hall (OH) Pastor
Anderson Hammerschmidt Patterson
Andrews (ME) Hatcher Payne (NJ)
Andrews (NJ) Hayes (IL) Pelosi
Annunzio Hertel Perkins
Anthony Hopkins Pickett
Applegate Horn Poshard
Aspin Horton Price
Barrett Hoyer Quillen
Bentley Hubbard Rahall
Berman Hughes Rangel
Bevill Hunter Ravenel
Blackwell Hutto Reed
Boehlert Jefferson Ridge
Boehner Johnson (TX) Riggs
Bonior Jones (GA) Roberts
Borski Jones (NC) Roe
Brewster Kanjorski Roemer
Brooks Kennedy Ros-Lehtinen
Broomfield Kildee Rose
Brown Kleczka Roybal
Bruce Kostmayer Sabo
Bryant LaFalce Sanders
Bunning Lantos Sangmeister
Burton LaRocco Savage
Bustamante Lehman (CA) Sawyer
Camp Lehman (FL) Scheuer
Campbell (CO) Levin (MI) Schulze
Carr Lewis (CA) Serrano
Clay Lewis (GA) Sikorski
Clement Lipinski Sisisky
Coleman (MO) Long Skelton
Collins (IL) Lowery (CA) Slaughter
Collins (MI) Lowey (NY) Smith (FL)
Conyers Luken Smith (IA)
Costello Machtley Smith (OR)
Cox (IL) Manton Snowe
Coyne Markey Solarz
Darden Marlenee Solomon
Davis Martin Staggers
de la Garza Matsui Stokes
DeFazio Mavroules Studds
DeLay Mazzoli Sundquist
Dellums McCandless Sweet
Derrick McCloskey Swift
Dicks McDade Synar
Dingell McEwen Tallon
Dixon McHugh Taylor (NC)
Donnelly McMillen (MD) Thomas (GA)
Dooley McNulty Thomas (WY)
Downey Mfume Thornton
Dymally Miller (CA) Torres
Early Miller (OH) Towns
Edwards (CA) Mineta Traficant
Edwards (OK) Mink Traxler
Emerson Moakley VanderSchoeld
Engel Molinari Unsoeld
Espy Mollohan Vento
Evans Moody Vucanovich
Fascell Moran Walker
Fazio Morella Washington
Feighan Murphy Waters
Flake Murtha Waxman
Foglietta Myers Weber
Ford (MI) Nagle Weiss
Ford (TN) Natcher Weldon
Frank (MA) Neal (MA) Wheat
Frost Nichols Williams
Gejdenson Nowak Wilson
Gephardt Oaker Wise
Gilchrist Oberstar Wolpe
Gilman Obey Yates
Gingrich Olver Yatron
Gonzalez Ortiz Young (AK)
Goodling Owens (NY)
Gordon Owens (UT)

NOT VOTING—21

- Armey Johnson (CT) Mrazek
AuCoin Kolter Peterson (FL)
Boxer Russo
Dannemeyer Levine (CA) Santorum
Gaydos Martinez Stark
Grandy Miller (WA) Whitten
Jenkins Morrison Young (FL)

So the amendment was not agreed to.