DEBT COLLECTION ACT OF 1981

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF THE INTERNAL REVENUE SERVICE

OF THE

COMMITTEE ON FINANCE UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 1249

JULY 20, 1981

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DEBT COLLECTION ACT OF 1981

MONDAY, JULY 20, 1981

U.S. SENATE,
SUBCOMMITTEE ON OVERSIGHT OF THE
INTERNAL REVENUE SERVICE,
COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2221, Dirksen Senate Office Building, Hon. Charles E. Grassley (chairman) presiding.

Present: Senators Grassley and Baucus.

[The committee press release, the bill S. 1249, and the Joint Committee on Taxation description of S. 1249 follow:]

Press Release No. 81-151

PRESS RELEASE

FOR IMMEDIATE RELEASE
July 8, 1981

COMMITTEE ON FINANCE
UNITED STATES SENATE
Subcommittee on Oversight of the
Internal Revenue Service
2227 Dirksen Senate Office Bldg.

FINANCE SUBCOMMITTEE ON OVERSIGHT OF THE INTERNAL REVENUE SERVICE SETS HEARING ON DEBT COLLECTION ACT OF 1981

Senator Grassley, Chairman of the Subcommittee on Oversight of the Internal Revenue Service of the Senate Committee on Finance, announced today that the Subcommittee will hold a hearing on July 20, 1981, on S. 1249, the Debt Collection Act of 1981.

The hearing will begin at 9:30 a.m. in Room 2221 of the Dirksen Senate Office Building.

S. 1249 is intended to increase the efficiency of Government-wide efforts to collect debts owed the United States, require the Office of Management and Budget to establish regulations for the reporting of debts owed the United States, and provide additional procedures for the granting of credit by the United States and for the collecting of debts owed the United States. S. 1249 would: (1) require individuals to supply their social security number when applying for credit or financial assistance which would result in indebtedness to the Government; (2) allow the Secretary of the Treasury to disclose to officers and employees of a Federal agency whether a Federal loan applicant has any outstanding unpaid tax liabilities; (3) allow the Secretary of the Treasury to disclose a delinquent Government debtor's Internal Revenue Service mailing address to private contractors for debt collection purposes; and (4) allow an increase in the interest rate charged on delinquent taxes to 100 percent of the prime rate.

Requests to Testify.--Witnesses who desire to testify at the hearing must submit a written request to Robert E. Lighthizer, Chief Counsel, Committee on Finance, Room 2227 Dirksen Senate Office Building, Washington, D.C. 20510, to be received no later than the close of business Tuesday, July 14, 1981. Witnesses will be notified as soon as practicable thereafter whether it has been possible to schedule them to present oral testimony. If for some reason a witness is unable to appear at the time scheduled, he may file a written statement for the record in lieu of the personal appearance. In such a case, a witness should notify the Committee of his inability to appear as soon as possible.

Consolidated testimony.--Senator Grassley urges all witnesses who have a common position or who have the same general interest to consolidate their testimony and designate a single spokesman to present their common viewpoint orally to the Subcommittee. This procedure will enable the Subcommittee to receive a wider expression of views than it might otherwise obtain. Senator Grassley urges that all witnesses exert a maximum effort to consolidate and coordinate their statements.

Legislative Reorganization Act.--Senator Grassley stated that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the Committees of Congress "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument."

Witnesses scheduled to testify should comply with the following rules:

(1) All witnesses must submit written statements of their testimony.

(2) The written statement must be typed on letter-size paper (not legal size) and at least 100 copies must be delivered not later than noon on Friday, July 17, 1981.

(3) All witnesses must include with their written statement a summary of the principal points included in the statement.

(4) Witnesses should not read their written statements to the Subcommittee, but ought instead to confine their oral presentations to a summary of the points included in the statement.

(5) Not more than five minutes will be allowed for the oral summary.

Written statements.--Witnesses who are not scheduled to make an oral presentation, and others who desire to present their views to the Subcommittee, are urged to prepare a written statement for submission and inclusion in the printed record of the hearing. These written statements should be typewritten, not more than 25 double-spaced pages in length, and mailed with five (5) copies to Robert E. Lighthizer, Chief Counsel, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510, not later than Monday, August 3, 1981. On the first page of your written statement please indicate the date and subject of the hearing.

P.R.#81-151

II

97TH CONGRESS
1ST SESSION

S. 1249

To increase the efficiency of Government-wide efforts to collect debts owed the United States, to require the Office of Management and Budget to establish regulations for reporting on debts owed the United States, and to provide additional procedures for the collection of debts owed the United States.

IN THE SENATE OF THE UNITED STATES

MAY 21 (legislative day, APRIL 27), 1981

Mr. PERCY (by request) (for himself, Mr. ANDREWS, Mr. ARMSTRONG, Mr. BOREN, Mr. CHAFEE, Mr. COHEN, Mr. DANFORTH, Mr. DECONCINI, Mr. DENTON, Mr. DOMENICI, Mr. GORTON, Mr. HAYAKAWA, Mr. LUGAR, Mr. PACKWOOD, Mr. PRYOR, Mr. PROXMIRE, Mr. ROTH, Mr. RUDMAN, Mr. SASSER, Mr. THURMOND, Mr. TOWER, Mr. WALLOP, Mr. WARNER, Mr. NICKLES, Mr. MELCHER, Mr. GOLDWATER, Mr. CHILES, Mr. KASTEN, Mr. GRASSLEY, Mr. HEFLIN, Mr. LEVIN, Mr. HEINZ, Mr. SIMPSON, and Mr. MATTINGLY) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

JULY 10 (legislative day, JULY 8), 1981

Ordered that if and when reported from the Committee on Governmental Affairs, the bill be referred to the Committee on Finance for consideration of those provisions under its jurisdiction

JULY 17 (legislative day, JULY 8), 1981

Reported by Mr. ROTH (for Mr. PERCY), with amendments

[Omit the part struck through and insert the part printed in italic]

JULY 17 (legislative day, JULY 8), 1981

Referred, pursuant to the order of July 10, 1981, to the Committee on Finance for consideration of those provisions under its jurisdiction

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A BILL

To increase the efficiency of Government-wide efforts to collect debts owed the United States, to require the Office of

Management and Budget to establish regulations for reporting on debts owed the United States, and to provide additional procedures for the collection of debts owed the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Debt Collection Act of 1981".

SEC. 2. (a) Section 552a of title 5 of the United States Code is amended in subsection (a) thereof—

(1) by striking out "and" at the end of paragraph (6), by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; and", and by inserting after paragraph (7) the following new paragraph:

"(8) the term 'consumer reporting agency' means—

"(i) a consumer reporting agency as such term is defined in subsection (f) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), or

"(ii) any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of (I) obtaining credit or other information on consumers for the purposes of furnishing such information to consumer reporting agencies (as defined

in clause (i) of this paragraph), or (II) serving as a marketing agent under arrangements enabling third parties to obtain such information from such reporting agencies.".

(b) section 522a of title 5 of the United States Code is further amended in subsection (b) thereof—

(1) in subsection (b)(10), by striking out "or";

(2) in subsection (b)(11), by striking out the period at the end thereof and inserting in lieu thereof "; or";

(3) by adding at the end thereof the following:

"(12) to a consumer reporting agency, consistent with the provisions of section 3 of this Debt Collection Act of 1981.".

(c) Section 522a of title 5 of the United States Code is further amended in subsection (m) thereof—

(1) by striking out "When an agency provides" and inserting in lieu thereof "(1) Except as provided in paragraph (2), when an agency provides"; and

(2) by adding at the end thereof the following:

"(2) A consumer reporting agency to which a record is disclosed under subsection (b)(12) of this section shall not be considered a contractor for the purposes of this section.".

DISCLOSURE TO A CONSUMER REPORTING AGENCY

SEC. 3. *(a)* Whenever the head of an agency or his designee attempts to collect a claim of the United States under section 3(a) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(a)), or other statutory ~~authority,~~ *authority except any claim under the Internal Revenue Code of 1954,* the head of the agency or his designee—

(1) *after reviewing the claim and determining that such claim is valid and overdue,* may notify a consumer reporting agency that a person is responsible for ~~a~~ *the* claim if—

(A) *(i)* the head of the agency or his designee has sent a written notice to the most recently available address for such person informing such person that the agency intends to notify a consumer reporting agency, in not less than sixty days after sending such notice, that the person is responsible for such claim; *or*

(ii) in the event that an agency does not have an address for such person, the agency has taken reasonable action to locate such person;

(B) such notice includes the specific information intended to be released, and a statement of such person's right to a full explanation of the

claim and to dispute any information concerning the claim in the records of the agency; and

(C) such person—

(i) has not repaid or agreed to repay such claim under a repayment plan which is agreeable to the head of the agency or his designee and is in a written form signed by such person, or

(ii) has not filed for review of such claim under paragraph (2) of this section; and

(2) shall provide, upon request of any person alleged by the agency to be responsible for such claim, for the review of the obligation of such person, with an opportunity for reconsideration of the initial decision upon review, and under such regulations and procedures as the head of the agency may provide, prior to the notification of any consumer reporting agency under paragraph (1) of this section and at such other times as may be permitted by law;

(3) shall, prior to the notification under paragraph (1), obtain satisfactory assurances from such consumer reporting agency concerning the compliance of the consumer reporting agency with the Fair Credit Reporting

Act and any other Federal law governing the provision of consumer credit information; and,

(4) shall promptly notify the consumer reporting agency of any substantial change in the status or amount of such indebtedness and, upon the request of any such consumer reporting agency for verification of any or all information so released, promptly verify or correct, as appropriate, such information.

(b) The head of the agency may not release to consumer reporting agencies under subsection (a) information other than—

(1) the name, address, social security number, and other information necessary to establish the identity of the person;

(2) the amount, status, and history of the claim; and

(3) the name of the agency under which the claim arose.

USE OF SOCIAL SECURITY NUMBERS

SEC. 4. (a) Departments and agencies shall require ~~individuals~~ *each individual* applying for credit, financial assistance, or payment which may result in an indebtedness to the United States or any agency thereof to furnish ~~their~~ *his* social security number pursuant to the requirements outlined in ~~paragraph~~ *subsection* (b) of this section.

(b) ~~Social security numbers~~ *Any social security number* obtained under ~~paragraph~~ *subsection* (a) of this section ~~will~~ *may* be used for verification of *the* applicant's identity in connection with credit management and debt collection purposes undertaken pursuant to the Federal Claims Collection Act of 1966 or other statutory authority.

SALARY OFFSET

SEC. 5. (a) The title and first sentence of section 5514(a) of title 5, United States Code, is amended to read as follows:

§5514. Installment deduction for indebtedness to the United States

"(a)(1) When the head of an agency or his designee, or the head of the Postal Service or his designee, determines that an employee, member of the Armed Forces or Reserve of the Armed Forces, is indebted to the United ~~States,~~ *States for debts to which the United States is entitled to be repaid at the time of the determination by the head of an agency or his designee,* or is so notified by the head of another agency or his designee, or the head of the Postal Service or his designee, the amount of indebtedness may be collected in monthly installments, or at officially established pay intervals, by deduction from the current pay account of the individual. The deductions may be made from basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an indi-

vidual not entitled to basic pay, other authorized pay. The amount deducted for any period may not exceed 25 percent of disposable pay, unless the deduction of a greater amount is necessary to make the collection within the period of anticipated active duty or employment. If the individual retires or resigns, or if his employment or period of active duty otherwise ends, before collection of the amount of the indebtedness is completed, deduction shall be made from payments of any nature due the individual from the agency for their retirement or retired pay.".

~~(b) Such section is amended by adding at the end thereof the following new paragraph:~~

~~(2) The collection of any amount under this section shall be in accordance with the standards promulgated pursuant to the Federal Claims Collection Act of 1966 or in accordance with any other statutory authority for the collection of claims of the United States or any agency thereof.".~~

(b) Such section is amended by adding at the end thereof the following new paragraphs:

"(2) Except as provided in paragraph (3) of this subsection, prior to collecting any indebtedness of an individual under paragraph (1) of this subsection, the head of the agency collecting the debt or his designee, shall provide the individual—

"(A) written notification of the nature and amount of the indebtedness, the agency's intention to collect the debt through salary offsets, and an explanation of his rights under this subsection;

"(B) an opportunity to inspect and copy the agency's records with respect to the debt;

"(C) an opportunity for the review of the determination of the agency with respect to the indebtedness of the individual; and

"(D) an opportunity to enter into a written agreement with the agency, under terms agreeable to the head of the agency or his designee, for the repayment of the debt.

"(3) If any employee from whom deductions were made under paragraph (1) of this subsection retires or resigns or if his employment or period of active duty otherwise ends before collection of the amount of the indebtedness is completed, deductions shall be made from payments of any nature due the individual from the agency for his retirement or retired pay.

"(4) The collection of any amount under this section shall be in accordance with the standards promulgated pursuant to the Federal Claims Collection Act of 1966 or in accordance with any other statutory author-

ity for the collection of claims of the United States or any agency thereof.".

PROTECTION OF FEDERAL DEBT COLLECTORS

SEC. 6. Section 1114 of title 18 of the United States Code is amended by adding at the end thereof the following: "any officer or employee of the United States designated to collect or compromise a Federal claim in accordance with the Federal Claims Collection Act of 1966 or other statutory authority.".

SCREENING POTENTIAL DEBTORS

SEC. 7. (a) Section 6103(l)(3) of the Internal Revenue Code of 1954 (relating to disclosure of returns and return information to the Privacy Protection Study Commission) is amended to read as follows:

"(3) DISCLOSURE OF CERTAIN RETURN INFORMATION TO FEDERAL LENDING AGENCIES—

"(A) IN GENERAL.—Upon written request, the Secretary may disclose to officers and employees of a Federal agency ~~return information relating to the amount, if any, of any outstanding liability of a Federal loan applicant~~ *whether a Federal loan applicant has an outstanding liability* for any tax, penalty, interest, fine, forfeiture, or other imposition under this title.

"(B) RESTRICTION ON DISCLOSURE.—The Secretary shall disclose ~~return~~ information under subparagraph (A) only for purposes of, and to the extent necessary in, determining ~~the outstanding liabilities of an applicant for a Federal loan.~~ *whether an applicant for a Federal loan has outstanding liabilities. Information regarding outstanding liabilities which are in dispute shall not be disclosed under subparagraph (A).*

"(C) FEDERAL LOAN.—For purposes of this paragraph, the term 'Federal loan' means a loan of money by, or guaranteed or insured by, the Federal Government or Federal agency to which a disclosure is authorized under this paragraph."

(b) Section 6103(p) of the Internal Revenue Code, relating to procedure and recordkeeping, is amended by—

(1) striking out "or (l) (3) or (6)" in paragraph (3)(C)(i) and inserting in lieu thereof "or (l)(6)";

(2) striking out "(l) (3), (6), (7), or (8)" in paragraph (4) and inserting in lieu thereof "(l) (6), (7), or (8)"; and

(3) striking out "(l) (1), (2), or (5), or (o)(1), the commission described in (l)(3)" in paragraph (4)(F)(ii) and inserting in lieu thereof "(l) (1), (2), (3), or (5), or (o)(1),".

Debtor Identity Information

(b) Section 6103(m)(2) of the Internal Revenue Code of 1954 relating to disclosure of taxpayer identity information, is amended to read as follows:

"(2) FEDERAL CLAIMS.—Upon written request, the Secretary may disclose the mailing address of a taxpayer for use by officers, employees, or agents of a Federal agency for purposes of locating such taxpayer for purposes of collecting or compromising a Federal claim against the taxpayer in accordance with the provisions of section 3 of the Federal Claims Collection Act of 1966.".

(c) Section 7213(a)(2) of the Internal Revenue Code of 1954, relating to unauthorized disclosure of information, is amended by striking out "or (m)(4)" and inserting in lieu thereof "or (m) (2) or (4)".

DETERMINATION OF RATE OF INTEREST

SEC. 8. Section 6621 of the Internal Revenue Code of 1954 is amended—

(a) Subsection (b) thereof is amended to read as follows:

"(b) ADJUSTMENT OF INTEREST RATE.—The Secretary shall establish an adjusted rate of interest for the purpose of subsection (a) not later than October 15 of any year if the adjusted prime rate charged by banks for the 12 months ending with September of that year, rounded to the nearest

full percent, is at least a full percentage point more or less than the interest rate which is then in effect. Any such adjusted rate of interest shall be equal to the adjusted prime rate charged by banks, rounded to the nearest full percent, and shall become effective on February 1 of the immediately succeeding year. An adjustment provided for under this subsection may not be made prior to the expiration of 11 months following the date of any preceding adjustment under this subsection which changes the rate of interest.".

(b) Subsection (c) thereof is amended to read as follows:

"(c) DEFINITION OF PRIME RATE.—For purposes of subsection (b), the term 'adjusted prime rate charged by banks' means the average of the predominant prime rate for each of the 12 months ending with the month of September quoted by commercial banks to large businesses, as determined by the Board of Governors of the Federal Reserve System.".

CLARIFICATION TO THE STATUTE OF LIMITATIONS FOR ADMINISTRATIVE OFFSET

SEC. 9. Section 2415 of title 28 of the United States Code is amended by adding the following subsection (i):

"(i) The provisions of this section shall not prevent the United States or an officer or agency thereof from collecting by means of administrative offset at any time, any claim of the United States or an officer or agency thereof from money

payable to or held on behalf of an individual. ~~Pursuant to standards promulgated under section 952(a) of title 5, United States Code, the head of an agency or his designee,~~ *Whenever the head of an agency or his designee attempts to collect a claim of the United States under section 3(a) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(a)), he* shall prescribe regulations and establish standards for the exercise of such administrative offset based on the best interest of the United States, the likelihood of collecting by such offset, and the cost effectiveness of carrying an open claim beyond 6 years.".

INTEREST AND PENALTY ON INDEBTEDNESS TO THE UNITED STATES

~~SEC. 10. Section 952 of title 31 of the United States Code is amended by adding the following subsection (d):~~

SEC. 10. Section 3 of the Federal Claims Collection Act of 1966 (31 U.S.C. 952) is amended by adding the following new subsection:

~~"(d) INTEREST AND PENALTY.—(1)~~ *"(1)* Except as provided in ~~subsection (3),~~ *paragraph (3),* the head of an agency or his designee shall charge a minimum annual rate of interest on outstanding debts equal to the average investment rate for the Treasury tax and loan accounts for the twelve months ending with September each year, rounded to the nearest whole per centum. The Secretary of the Treasury or

his designee shall publish such rate each year not later than October 31 and shall become effective on the first day of the next calendar quarter. Quarterly revision of such rate is authorized when the average investment rate for the twelve months end of each calendar quarter, rounded to the nearest whole per centum, is greater or less than the existing published rate by two hundred basis points.

"(2) Except as provided in ~~subsection (3),~~ *paragraph (3)*, the head of an agency or his designee shall assess charges to cover the additional costs of processing and handling delinquent claims and shall assess a penalty charge, not to exceed 6 per centum per annum, for failure to pay any debt more than ninety days past due.

"(3) Interest and penalty charges under ~~subsections~~ *paragraphs* (1) and (2) do not apply if a statute, a provision of regulation required by statute, a loan agreement or contract either prohibit the charging of interest or penalty or explicitly fix the charges for interest or penalty. The head of an agency or his designee may promulgate regulations identifying circumstances appropriate to waive collection of interest and penalties charges in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General. Waivers in accordance with such regulations shall constitute compliance with the requirements of this subsection. This subsection shall not apply to any claim

under a binding contract executed before the effective date of this subsection.".

SERVICE OF SUMMONS

~~SEC. 11. Chapter 18 of title 31 of the United States Code is amended by adding the following new section 954:~~

~~"§ 954. Service of legal process~~

SEC. 11. Section 3 of the Federal Claims Collection Act of 1966 (31 U.S.C. 952) is amended by adding the following new subsection:

~~"Service~~ *"(e) Service* of legal process brought for the collection of a debt due and owing to the United States in accordance with this statute or other statutory authority shall be accomplished in accordance with the Federal Rules of Civil Procedure by certified or registered ~~mail,~~ *mail with* return receipt ~~requested~~ *requested,* or in such manner as the court, upon motion without notice, directs if service is otherwise unpracticable under the Federal Rules of Civil Procedure or other provisions of statute.".

REPORT ON AGENCY DEBT COLLECTION ACTIVITIES

SEC. 12. (a) The Director of the Office of Management and Budget, in consultation with the Secretary of the Treasury and Comptroller General of the United States, shall establish regulations requiring each agency with outstanding debts to prepare and transmit to the Director and the Treasury at least once each year a report which summarizes the

status of loans and accounts receivable managed by each agency. The report ~~will contain sufficient detail to enable the Director to evaluate the effectiveness of the debt collection activity of each agency.~~ *shall contain information regarding—*

"(1) the total amount of loans and accounts receivable owed to the agency and when the funds owed to the agency are due to be repaid;

"(2) the total amount of receivables and number of claims that are at least thirty days past due;

"(3) the total amount written off as uncollectable, actual, and allowed for;

"(4) the rate of interest charged for overdue debts and the amount of interest charged and collected on debts;

"(5) the total number of claims and total amount collected;

"(6) the number of claims and the total amount of claims referred to the Department of Justice for settlement and the number of claims and the total amount of claims settled by such Department;

"(7) for each program or activity administered by the agency, the information described in clauses (1) through (6) of this subsection; and

"(8) such other information as the Director finds necessary in order to determine whether the agency is engaging in aggressive action to collect the claims of the agency.".

(b) The Director shall analyze the reports received by each agency under subsection (a) and shall report annually to the Congress on the management of agency debt collection activities, including the information provided to the Director under subsection (a) above.

CONTRACTS FOR COLLECTION SERVICES

SEC. 13. Section 3 of the Federal Claims Collection Act of 1966 (31 U.S.C. 952) is amended by adding the following new subsection (f):

"(f) Notwithstanding the provisions of any other law governing the collection of claims owed the United States, except for collections of unpaid or underpaid debts under the Internal Revenue Code (26 U.S.C. et seq.) the head of an agency or his designee may enter into a contract with any person or organization under such terms and conditions as the head of the agency or his designee considers appropriate for collection services in recovering indebtedness owed to the United States. Any such contract shall include provisions specifying that the head of the agency or his designee retains the authority to resolve disputes, compromise claims, terminate collection action, and initiate legal action and that the

contractor shall be subject to the Privacy Act of 1974, section 552a of title 5, United States Code, and, when applicable, to Federal and State laws and regulations pertaining to debt collection practices including the Fair Debt Collection Practices Act.".

DESCRIPTION OF S. 1249
THE DEBT COLLECTION ACT OF 1981
SCHEDULED FOR A HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF THE INTERNAL REVENUE SERVICE

OF THE

COMMITTEE ON FINANCE

ON JULY 20, 1981

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

INTRODUCTION

The Senate Finance Committee's Subcommittee on Oversight of the Internal Revenue Service has scheduled a hearing on July 20, 1981, on S. 1249, the Debt Collection Act of 1981 (introduced by Senators Percy, Armstrong, Boren, Chafee, Danforth, Packwood, Roth, and several others). The bill was ordered reported by the Senate Committee on Governmental Affairs on July 9, 1981. Since the bill contains several tax provisions, it has been referred to the Senate Finance Committee.

The bill deals with the collection of debts by the Federal Government. The tax-related provisions in the bill would: (1) require applicants for Federal loans or financial assistance to provide their social security numbers with their applications; (2) allow the Internal Revenue Service to disclose to other Federal agencies whether a Federal loan applicant has any outstanding, unpaid tax liabilities; (3) allow the IRS to disclose individuals' mailing addresses to agents (private contractors) of Federal agencies for purposes of debt collection; and (4) increase the interest rate payable on overpayments and deficiencies of tax to 100 percent of the prime rate, adjusted annually.

This pamphlet, prepared in connection with the hearing, contains four parts. The first part is a summary of present law and the bill. The second part is a discussion of present law. The third part is a brief discussion of the tax-related issues in the bill. Part four provides a more detailed description of the provisions of S. 1249, as ordered reported by the Senate Committee on Governmental Affairs.

I. SUMMARY

A. Present Law

Present law (the Internal Revenue Code and other Federal laws) contains several provisions governing the collection of debts owed to the Federal Government. These include the Privacy Act, the Federal Claims Collection Act of 1966, the Fair Credit Reporting Act, and the Internal Revenue Code provisions relating to the disclosure of tax returns and return information and the interest rate on tax refunds and deficiencies.

1. Nontax-related provisions

Disclosure to consumer reporting agencies

The Privacy Act generally prevents a Federal agency from disclosing an individual's records without the individual's consent. Thus, delinquencies of debtors on their financial obligations to the Federal Government may not be referred to private debt collection agencies.

Salary offsets

Under present law, a Federal employee's salary may be withheld to satisfy a debt owed to the Federal Government only if the debt resulted from an erroneous payment.

Protection of Federal debt collectors

Under present law, the murder of a Federal debt collector is not a Federal criminal offense.

Statute of limitations for Federal debt collection

In general, there is a six-year statute of limitations on Federal debt collection actions. There is no exception for Federal debts collected through administrative offset.

Interest and penalties on indebtedness to the United States

The Federal Claims Collection Act of 1966, dealing with the collection of Federal debts, contains no provision requiring the assessment of interest or penalties on debts owed to the Federal Government.

2. Tax-related provisions

Disclosure of returns and return information for purposes of Federal debt collection

Present law permits the disclosure of return information by the Internal Revenue Service to other governmental agencies, for the purpose of assisting them with debt collection, in several circumstances. One area of permitted disclosure is the disclosure of taxpayers' mailing addresses to officers and employees of Federal agencies, for their use in collecting Federal debts. However, this provision does not permit disclosure to agents (e.g., private debt collection agencies) of Federal agencies. Moreover, there is no provision which allows the IRS to in-

form other Federal agencies whether applicants for Federal loans have any outstanding tax deficiencies.

Interest rate on tax refunds and deficiencies

Under present law, the interest rate payable on tax refunds and deficiencies is fixed, under Treasury regulations, at 90 percent of the prime rate. Adjustments to this rate may not be made more frequently than every 23 months.

B. Summary of S. 1249

1. Nontax-related provisions

Disclosure to consumer reporting agencies

The bill would allow Federal agencies to refer credit information on delinquent debtors to credit bureaus. Thus, delinquencies and defaults by debtors on their financial obligations to the Federal Government would be reflected in their credit records.

Salary offsets

The bill would permit the offset of a Federal employee's salary to satisfy general debts owed to the Federal Government.

Protection of Federal debt collectors

Under the bill, the murder of a Federal debt collector would be a Federal criminal offense.

Statute of limitations for Federal debt collection

In general, the bill would provide an open-ended statute of limitations in the case of Federal debt collection through the administrative offset of future payments.

Interest and penalties on indebtedness to the United States

The bill would require the payment of interest on all debts owed to the Federal Government and would impose penalties on delinquent debts.

Service of summons

The bill would permit U.S. attorneys to use the mail, State and local law enforcement officials, or private contractors to serve legal documents in the litigation of cases involving Federal debt collection.

Reports on agency debt collection activities

Federal agencies would be required to report to the Treasury, the Office of Management and Budget, and the Congress on their debt collection activities.

Contracting for the collection of debts

The bill would provide specific authority for Federal agencies to contract with private collection agencies for purposes of debt collection (other than debts under the Internal Revenue Code).

2. Tax-related provisions

Use of social security numbers

The bill would require individuals who apply for Federal loans or assistance to furnish their social security numbers.

Disclosure of information by the IRS for purposes of screening potential debtors

The bill would permit the IRS to disclose to another Federal agency whether a Federal loan applicant has any outstanding tax liability.

Disclosure of debtor identity information

The bill would permit the IRS to disclose mailing addresses to agents (i.e., private debt collectors), as well as to officers and employees, of other Federal agencies for purposes of collecting Federal debts.

Interest rate on tax refunds and deficiencies

The interest rate on tax refunds and deficiencies would be fixed with regard to 100 percent, rather than 90 percent, of the prime interest rate for the year. This rate would be adjusted on an annual basis whenever the prime rate is one percentage point above or below the prevailing prime rate.

II. PRESENT LAW

A. Nontax-Related Provisions

1. Disclosure of records under the Privacy Act

Under the Privacy Act, there is a general prohibition against disclosure by a Federal agency of any record contained in a system of records to any person, or to another agency, without a written request by, or prior written consent of, the individual to whom the record pertains. However, several types of disclosures may be made without the individual's consent. These include disclosures to officers and employees of the agency which maintains the record in the performance of their duties; disclosures to the Bureau of the Census or to the National Archives; disclosures to other agencies for purposes of civil or criminal law enforcement; disclosures to the Congress; disclosures to the Comptroller General in the course of the performance of the duties of the General Accounting Office; and disclosures pursuant to court orders (5 U.S.C. sec. 552a(b)). Currently, the Privacy Act contains no exception for disclosures to a consumer reporting agency.

Under the Privacy Act, if an agency provides by contract for the operation of a system of records to accomplish an agency function, the requirements relating to individual records are to apply to that system of records. For purposes of the criminal penalties for wrongful disclosure of records, contractors and their employees are considered to be employees of the contracting agency. The penalty for wrongful disclosures of records is a fine of up to $5,000.

2. The Federal Claims Collection Act of 1966

The Federal Claims Collection Act of 1966 generally provides that a Federal agency must attempt the collection of all claims of the United States for money or property arising out of the activities of, or referred to, the agency (31 U.S.C. secs. 951–953).

That Act provides for the compromise, or termination or suspension of certain claims if it appears that no person liable on the claim has the present or prospective financial ability to pay any significant sum on the claim or that the cost of collecting the claim is likely to exceed the amount of the recovery. Compromise or termination of collection generally is permitted if a claim has not been referred to another agency for collection and if the claim does not exceed $20,000.

The Federal Claims Collection Act does not require the assessment of interest or penalties on debts owed to the Federal Government.

The Act contains no provision relating to service of summons.

3. Salary offsets

Present law provides for deductions from pay, of a Federal employee, in certain circumstances, for indebtedness resulting from erroneous payments (5 U.S.C. sec. 5514). If a Federal agency determines that an employee, a member of the Armed Forces, or a Reservist is in-

debted to the United States because of an erroneous payment from the agency, then such indebtedness may be collected in monthly installments, or at regular pay period intervals, by deductions of reasonable amounts from the individual's pay.

In general, the amount deducted may not exceed two-thirds of the pay from which the deduction is made. If the individual retires before the indebtedness is collected, then deductions are made from later payments of any nature due the individual from the agency concerned.

4. Protection of officers and employees of the United States

Under present law, the murder of certain specifically designated officers and employees of the United States is classified as a Federal offense (18 U.S.C. sec. 1114). Federal debt collectors are not included in the listing of "protected" officers and employees.

5. Statute of limitations for debt collection actions brought by the United States

In general, an action for money damages brought by the United States, which is founded upon an express or implied contract, must be commenced within six years after the right of action has accrued or, if later, within one year after final decisions have been rendered in applicable administrative proceedings (28 U.S.C. sec. 2415). An action for money damages which is founded upon tort must be brought within three years after the right of action first accrues. Collection of delinquent debts owed to the Federal Government, by means of administrative offset, is subject to these same limitations.

B. Tax-Related Provisions

1. Disclosure of returns and return information for purposes of debt collection

Section 6103 of the Internal Revenue Code governs the disclosure of returns and return information. In general, returns and return information are confidential and may be disclosed only as specifically provided in the Code.[1]

Present law permits the disclosure of return information by the Internal Revenue Service to other governmental agencies, for the purpose of assisting them with debt collection, in several circumstances. Upon written request, the IRS may disclose mailing addresses of taxpayers to other Federal agencies for their use in the collection or compromise of Federal claims against taxpayers under the Federal Claims Collection Act of 1966 (Code sec. 6103(m)(2)). These mailing addresses may be used only by officers and employees of an agency who are personally and directly engaged in the preparation of any administrative or judicial proceeding (or investigation) pertaining to the collection or compromise of a Federal claim. In addition, the IRS may disclose return information to State and local child support enforcement agencies for the purpose of, and to the extent necessary in, establishing and collecting child support obligations from and locating individuals owing such obligations (Code sec. 6103(l)(6)). Moreover, the IRS may disclose to the Secretary of Education the mailing address of any taxpayer who has defaulted on a student loan, for use by officers, employees, or agents (that is, private debt collectors) of the Department of Education for purposes of locating the taxpayer to collect the loan (Code sec. 6103(m)(4)). These addresses may be disclosed further to lenders, to State or local nonprofit guarantee agencies, and to institutions of higher education.

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[1] The term "return" is defined as any tax or information return, declaration of estimated tax, or claim for refund which is required (or permitted) to be filed on behalf of, or with respect to, any person. A return also includes any amendment, supplemental schedule, or attachment filed with the tax return, information return, etc.

"Return information" includes the following data pertaining to a taxpayer: his identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, and tax payments. Also included in the definition of return information is any particular of any data, received by, recorded by, prepared by, furnished to, or collected by the IRS with respect to a return filed by the taxpayer or with respect to the determination of the existence, or possible existence, of liability for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense provided for under the Code. A summary of data contained in a return and information concerning whether a taxpayer's return was, is being, or will be examined or subject to other investigation or processing also is return information. However, data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer is not return information.

The unauthorized disclosure of tax returns or return information is a felony punishable upon conviction by a fine of not more than $5,000 or imprisonment of not more than 5 years, or both. Furthermore, a taxpayer may bring a civil action for damages against a person who knowingly or negligently discloses returns or return information in violation of the disclosure provisions.

2. Interest rate on tax refunds and deficiencies

Present law (Code sec. 6621) provides that the interest rate payable on tax refunds and deficiencies is to be prescribed by Treasury regulations. However, adjustments in the tax interest rate may not be made more frequently than every 23 months.

The tax interest rate is set at 90 percent of the average prime rate, and is established by October 15th of any year if the prime rate for September of that year is at least one full percentage point above or below the existing tax interest rate. Changes in the tax interest rate are effective for the period beginning February of the year following that in which a new rate is established.

Any particular tax interest rate applies *only* to the taxable period for which it is in effect. As a result, several different tax rates may apply to a tax refund or deficiency attributable to several different tax periods.

The current tax interest rate, effective for the period from February 1, 1980, until February 1, 1982, is 12 percent.

The following table shows the Code's tax interest rate as compared to the average daily prime interest rate for each month from January 1976 through June 1981.

Comparison of Statutory Rate on Tax Underpayments and Overpayments and Prime Interest Rates, 1976–81

(Percent)

Year: Month	Statutory rate	Prime rate [1]
1976:		
January	9.00	7.00
February	7.00	6.75
March	7.00	6.75
April	7.00	6.75
May	7.00	6.75
June	7.00	7.20
July	7.00	7.25
August	7.00	7.01
September	*7.00*	*7.00*
October	7.00	6.78
November	7.00	6.50
December	7.00	6.35
1977:		
January	7.00	6.25
February	7.00	6.25
March	7.00	6.25
April	7.00	6.25
May	7.00	6.41
June	7.00	6.75
July	7.00	6.75
August	7.00	6.83
September	*7.00*	*7.13*
October	7.00	7.52
November	7.00	7.75
December	7.00	7.75
1978:		
January	7.00	7.93
February	6.00	8.00
March	6.00	8.00
April	6.00	8.00
May	6.00	8.27
June	6.00	8.63
July	6.00	9.00
August	6.00	9.01
September	*6.00*	*9.41*
October	6.00	9.94
November	6.00	10.94
December	6.00	11.55

See footnotes at end of table.

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COMPARISON OF STATUTORY RATE ON TAX UNDERPAYMENTS AND OVERPAYMENTS AND PRIME INTEREST RATES, 1976–81—Continued

(Percent)

Year: Month	Statutory rate	Prime rate [1]
1979:		
January	6.00	11.75
February	6.00	11.75
March	6.00	11.75
April	6.00	11.75
May	6.00	11.75
June	6.00	11.65
July	6.00	11.54
August	6.00	11.91
September	*6.00*	*12.90*
October	6.00	14.39
November	6.00	15.55
December	6.00	15.30
1980:		
January	6.00	15.25
February	12.00	15.63
March	12.00	18.31
April	12.00	19.77
May	12.00	16.57
June	12.00	12.63
July	12.00	11.48
August	12.00	11.12
September	*12.00*	*12.23*
October	12.00	13.79
November	12.00	16.06
December	12.00	20.35
1981:		
January	12.00	20.16
February	12.00	19.43
March	12.00	18.05
April	12.00	17.15
May	12.00	19.61
June	12.00	[2] 20.00

[1] Average daily rate for the month.
[2] Rate on June 25, 1981.

III. ISSUES RAISED BY TAX-RELATED PROVISIONS OF S. 1249

The bill raises several tax-related issues. Primarily, these issues relate to the extent to which the IRS should be permitted to disclose tax information on individual taxpayers to other Federal agencies and the extent to which the IRS should be involved in matters other than tax administration.

Many people believe that the IRS, because of the massive amount of information it has on individual taxpayers, should be involved more extensively in assisting other agencies of the Federal Government to collect debts owed to the Federal Government. However, others are concerned that, because the IRS has so much information, it has a duty to maintain the confidentiality of that information and to use it only for the purpose for which it was collected (that is, tax administration). Some are concerned that involving the IRS more in Federal debt collection will detract from voluntary compliance of individuals with the tax law and will divert IRS resources from tax collection functions.

Issues with regard to the interest rate on tax refunds and deficiencies concern the proper rate of interest and how often that rate should be adjusted.

IV. DESCRIPTION OF S. 1249

(THE DEBT COLLECTION ACT OF 1981)

A. Nontax-Related Provisions

1. Disclosure of information by a Federal agency to a consumer reporting agency

The bill would amend the Privacy Act to allow a Federal agency to disclose an individual's records to a consumer reporting agency, without the consent of the individual whose records are disclosed, provided that certain requirements are met. A consumer reporting agency would be an agency defined in section 603(f) of the Fair Credit Reporting Act.[1] In addition, a consumer reporting agency also would be any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in the practice of (1) obtaining credit or other information on consumers for the purposes of furnishing such information to consumer reporting agencies, or (2) serving as a marketing agent under arrangements enabling third parties to obtain such information from consumer reporting agencies.

Under the bill, if a Federal agency attempts to collect a claim of the United States under the Federal Claims Collection Act, or other statutory authority (except the Internal Revenue Code), it may, after reviewing the claim and determining that it is valid and overdue, notify a consumer reporting agency that a person is responsible for the claim. However, prior to doing so, the Federal agency attempting to collect the claim must send a written notice to the most recently available address of the person who owes the debt informing such person that the agency intends, in no less than 60 days after mailing the notice, to notify a consumer reporting agency that the person is responsible for the claim. If the agency does not have an address for the person responsible for the claim, then it must take reasonable action to locate the address. The written notice from the agency must include the specific information intended to be released to a consumer reporting agency, and a statement of the individual's right to a full explanation of the claim and right to dispute any information concerning the claim in the records of the agency. A Federal agency would be prohibited from releasing information to a consumer reporting agency if the person responsible for the claim (1) has repaid the claim, (2) has agreed to repay the claim under a written repayment

[1] The Fair Credit Reporting Act defines a consumer reporting agency as any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports (14 U.S.C. 1681a(f)).

plan that is agreeable to the agency, or (3) has filed for review of the claim.

In addition, prior to notification of a consumer reporting agency, the person alleged to be responsible for a Federal claim must be provided the opportunity to have the obligation reviewed, and to have the initial decision of the agency be reconsidered.

Finally, prior to notification of a consumer reporting agency, the Federal agency must receive satisfactory assurances from the consumer reporting agency that it is in compliance with the Fair Credit Reporting Act and any other Federal law governing the provision of consumer credit information.

After a consumer reporting agency has been notified that a person is responsible for a Federal claim, a Federal agency would be required to promptly notify it of any substantial change in the status or amount of the person's indebtedness and would have to verify or correct any information released, upon request by the consumer reporting agency.

Information that could be disclosed by a Federal agency to a consumer reporting agency would be restricted to: (1) the name, address, social security number, and other information necessary to establish the identity of the person who is indebted to the Federal Government; (2) the amount, status, and history of the claim, and (3) the name of the agency under which the claim arose.

2. Salary offsets

The bill would expand substantially the present law governing salary offsets. In general, if a Federal employee is indebted to the United States for any debt, for which the United States is entitled to be repaid, that employee's salary could be offset to satisfy such debt. The amount of the debt could be collected in monthly installments, or at officially established pay intervals, by deduction from the current pay account of the individual.

Deductions for indebtedness to the United States could be made from basic pay, special pay, incentive pay, retired pay, retainer pay, or any other authorized pay of a Federal employee, Postal Service employee, or member of the Armed Forces or Reserves. The maximum deduction would be 25 percent of disposable pay, unless a greater deduction were necessary to complete collection within the period of the debtor's anticipated active duty or employment. If an individual retired or resigned before collection were completed, then deductions would be made from payments of any nature due to the individual for retirement.

Prior to the collection of a debt through salary offset, the Federal agency would be required to notify the debtor, in writing, of the nature and amount of the indebtedness, the agency's intention to collect the debt through salary offsets, and an explanation of his rights with respect to the collection of the debt. These rights would be (1) an opportunity to inspect and copy the agency's records with respect to the debt; (2) an opportunity for the review of the determination of the agency with respect to the indebtedness; and (3) an opportunity to enter into a written agreement with the agency, under terms agreeable to the agency, for the repayment of the debt.

Finally, the collection of any debt through salary offset, would be made in accordance with standards promulgated under the Federal

Claims Collection Act of 1966 or any other statutory authority for the collection of claims of the United States.

3. Protection of Federal debt collectors

Officers or employees of the United States who are designated to collect or compromise a Federal claim in accordance with the Federal Claims Collection Act of 1966, or other statutory authority, would be included in the enumeration of "protected" officers and employees in 18 U.S.C. sec. 1114. Thus, the murder of such individuals would be a Federal offense.

4. Statute of limitations for debt collection actions brought by the United States

Under the bill, the statute of limitations for actions for money damages brought by the United States (generally six years) would not apply to the collection of debts by means of administrative offset. Moreover, the bill would require that if a Federal agency attempts to collect a claim of the United States under the Federal Claims Collection Act of 1966, it must prescribe regulations and establish standards for the exercise of administrative offsets that are based on the best interest of the United States, the likelihood of collecting by administrative offset, and the cost effectiveness of carrying an open claim beyond five years.

5. Interest and penalties on indebtedness owed to the United States

In general, the bill would require Federal agencies to charge a minimum annual rate of interest on outstanding debts. This interest rate would be equal to the average investment rate for Treasury tax and loan accounts for the twelve months ending with September each year, rounded to the nearest whole percent. The IRS would be required to publish the interest rate each year no later than October 31, and such rate would become effective on the first day of the next calendar quarter. Quarterly revision of the interest rate would be permitted when the average investment rate for the twelve months ending each calendar quarter, rounded to the nearest whole percent, is 200 basis points more or less than the existing, published rate.[2]

In addition, Federal agencies would be required to assess charges to cover the costs of processing and handling delinquent claims, and would be required to assess penalty charges. The penalty charge could not exceed six percent per annum and would apply to debts that are more than ninety days past due.

The interest and penalties mandated by the bill would not apply if a statute, regulation, loan agreement, or contract either prohibited the charging of interest or penalties or explicitly fixed interest or penalty charges. Furthermore, Federal agencies would be permitted to identify, through regulations, circumstances in which it is appropriate to waive the collection of interest and penalties, in accordance with standards that may be promulgated jointly by the Attorney General and the Comptroller General.

[2] 200 basis points are equal to two percent.

6. Service of summons

The bill would amend the Federal Claims Collection Act of 1966 to permit service of legal process, for purposes of debt collection, to be made in accordance with the Federal Rules of Civil Procedure by certified or registered mail, or in such other manner as a court directs.

7. Report on agency debt collection activities

The bill would require that Federal agencies report to the Treasury, the Office of Management and Budget, and the Congress, no less than annually, concerning their debt collection activities. This reporting requirement would be established through OMB regulations, in consultation with the Treasury Department and the General Accounting Office.

Each agency's report would be required to contain the following information:

(1) The total amount of loans and accounts receivable owed to the agency and when those amounts are due to be repaid;

(2) The total amount of receivables and number of claims that are at least 30 days past due;

(3) The total amount of debts written off as uncollectable;

(4) The rate of interest charged on overdue debts, and the amount of interest charged and collected on debts;

(5) The total number of claims and the amount collected;

(6) The number of claims and the total amount of claims referred to the Department of Justice for settlement, and the number of claims and the total amount of claims settled by the Department of Justice; and

(7) Any other information that the OMB finds necessary in order to determine whether the agency is engaging in aggressive action to collect claims.

The information required to be reported by each agency also would have to be reported separately for each program or activity administered by the agency.

8. Contracting for the collection of debts

The bill specifically would provide that Federal agencies may contract with private collection agencies, for purposes of collecting Federal claims, notwithstanding any other provision of law (except for the Internal Revenue Code) governing the collection of Federal claims.

B. Tax-Related Provisions

1. Use of social security numbers

Under the bill, Federal departments and agencies would require each individual who applies for credit, financial assistance, or any payment that may result in an indebtedness to the United States or any Federal agency to furnish his social security number. Any social security number obtained in this manner could be used only for purposes of verifying an applicant's identity in connection with credit management and debt collection purposes undertaken pursuant to the Federal Claims Collection Act of 1966 or other statutory authority.

2. Disclosure of information by the IRS for purposes of screening potential debtors

Upon written request, the IRS would be permitted to disclose to another Federal agency whether a Federal loan applicant has any outstanding tax liability (or other liabilities under the Internal Revenue Code). This information could be disclosed only for purposes of, and to the extent necessary in, determining whether an applicant for a loan has outstanding liabilities. Information concerning outstanding liabilities that are in dispute could not be disclosed.

For purposes of this provision, a Federal loan would be a loan of money by, or guaranteed or insured by, the Federal Government or a Federal agency.

3. Disclosure of debtor identity information

Under the bill, the IRS would be permitted to disclose mailing addresses of taxpayers to agents, as well as to officers and employees, of other Federal agencies for their use in locating taxpayers for the purpose of collecting or compromising Federal claims against taxpayers under the Federal Claims Collection Act of 1966. Such disclosures could be made upon written request.

The unauthorized redisclosure of information received in this manner would be a felony punishable upon conviction by a fine of not more than $5,000 or imprisonment of not more than 5 years, or both.

4. Interest rate on tax refunds and deficiencies [8]

The bill would require that the interest rate payable on tax refunds and deficiencies is to be based upon 100 percent, rather than 90 percent, of the prime interest rate.

The tax interest rate would be adjusted on an annual basis whenever the prime interest rate is one percentage point above or below the prevailing prime interest rate.

[8] The House Committee on Ways and Means, on July 10, 1981, tentatively agreed that the tax interest rate should be based upon 100 percent of the prime rate and should be adjusted annually. Furthermore, the Committee agreed to give the Treasury the option to adjust the interest rate semi-annually.

The interest rate would be established no later than October 15 of any year. The rate for any year would be based on the average of the predominant prime rate for each of the twelve months ending with the month of September, rounded to the nearest full percent. (Current law looks to the September rate, alone, rather than to a 12-month average.) This rate would become effective, for tax interest and deficiency purposes, on February 1 of the immediately succeeding year.

5. Effective date of tax provisions

The tax provisions of the bill would be effective upon enactment.

6. Revenue effect of increase in tax interest rate

It is estimated that the tax interest rate provision of this bill would increase budget receipts by $100 million in fiscal year 1982, have a negligible effect in 1983, increase receipts by $100 million in 1984, reduce receipts by $100 million in 1985, and increase receipts by $60 million in 1986. (This is based upon the assumption of a gradually declining prime interest rate over this time period, and the annual adjustment feature of the interest rate on tax refunds and deficiencies.)

Senator GRASSLEY [chairman, presiding]. I would like to call the meeting of the subcommittee hearing to order.

The topic of our hearing this morning is S. 1249, the Debt Collection Act of 1981.

This bill is designed to help the Federal Government collect $175 billion it is owed and develop procedures to extend credit in a more responsible manner in the future.

The Committee on Governmental Affairs has already held hearings on this issue, and subsequently reported it on July 20, 1981.

Since this measure has tax-related provisions it is referred to the Committee on Finance for additional consideration.

Many of the tax-related provisions involve disclosure issues which often undermine voluntary compliance, hence they are a concern of this subcommittee.

Basically, S. 1249 is designed to improve the Federal Government's collection function. The tax-related aspects of this bill:

One, require individuals to supply their social security number when applying for Federal credit or financial assistance which results in any debt to the Federal Government;

Under current law an individual cannot be denied Federal credit for failure to supply his or her social security number;

Two, permits the Secretary of the Treasury to disclose an individual's Federal credit history to other governmental agencies;

Three, allows Federal agencies to disclose credit information to private contractors for debt collection purposes. This includes disclosing addresses obtained from the IRS of delinquent Government debtors. This type of disclosure is impermissable under current law.

Four, increases the amount of interest charged on delinquent taxes to 100 percent of the prime rate. The interest rate individuals must pay the IRS if they do not pay their taxes in a timely fashion is 12 percent. This rate is adjusted every 23 months, and is set at 90 percent of the prime rate.

At the close of business on Friday, the prime rate was 20.5 percent. Therefore, individuals who have elected not to pay their taxes and receive a 12-percent loan from the Government.

This results in a large loss of revenue to the Federal Government.

Before I call on Senator Baucus for an opening statement, I have a letter from our colleague from Tennessee, Senator Jim Sasser, with permission to put a statement in the record. That permission is granted.

[The prepared statement of Senator Jim Sasser follows:]

PREPARED STATEMENT OF SENATOR JIM SASSER

I want to commend this committee for taking quick action in the consideration of S. 1249, the Debt Collection Act of 1981. As far as I am concerned, this bill is potentially the most significant cost-cutting legislative initiative affecting the Federal Government that will come out of the 97th Congress.

Beyond the immediate cost savings to be realized in the next several fiscal years, the Debt Collection Act is certain to result in solid, long-term improvements in the Federal Government's overall credit management practices. When David Stockman, Director of the Office of Management and Budget, testified at the Senate Governmental Affairs Committee hearing on S. 1249 last April 23, he indicated that such improvements are among the OMB's highest priorities and the Debt Collection Act is the best vehicle for cementing together many of the financial management reforms already developed by the agency.

So, we have yet another sound reason for approving S. 1249—not that we need yet another reason. Since Senator Percy and I first introduced comprehensive debt collection legislation in the 96th Congress, so much has been written about the need for such a bill, so many reasons to act in this area have been outlined, and so much has been said about the prospective benefits of this bill that there is little else to say.

Still, we must never lose sight of the two basic reasons why S. 1249 should become law, and should become law soon.

First, the figures on debts owed the United States Government by individuals and organizations simply beg for some kind of action. Those figures speak for themselves; they've been detailed so much that I don't have to repeat them here.

Second, there is the point that I have made at every juncture in the development and the consideration of debt collection legislation and that is this: it is both right and just for the government to recover the money that is owed it. Every time someone cheats on a loan he or she owes the Federal Government, that individual is cheating every honest, tax-paying American citizen. Moreover, that same individual is undermining so many worthwhile assistance programs for the millions of Americans who use them and who pay their debts on time.

Beyond these two points, Mr. Chairman, I have little to add, except to say that I believe it ought to be possible for the Congress to go a little further in order to ensure an even better debt collection program on the part of the Federal Government.

Specifically, I hope that my colleagues in the Senate and in the House of Representatives will see fit, sometime during this session, to approve a tax offset program with the Internal Revenue Service. That is, I hope it is possible for the IRS to begin to deduct delinquent debts owed the Federal Government from the tax refunds of debtors who are overdue with a Federal agency.

OMB Director Stockman indicated at the April 23 hearing that the Administration is seriously considering such a proposal—which I've long supported—and will make a decision later this year. I sincerely hope that the Administration will see fit to endorse the tax offset idea, since it is estimated that this procedure could probably recover $500 million annually for the Federal Government.

A similar offset program is already in place at the state level in Oregon, where by all accounts it is successful.

With an IRS tax offset program, I believe that S. 1249 would be an even better bill. Still, S. 1249 is an excellent bill, one that I have cosponsored, one that I am sure that each and every one of my colleagues in the Senate can support, and one that I hope will become law in time for the next fiscal year so that the Federal Government—and the citizens who pay for it—can realize cost savings as soon as possible.

Senator GRASSLEY. Senator Baucus, the ranking minority member of this committee, do you have an opening statement?

Senator BAUCUS. Thank you, Mr. Chairman.

Very briefly, there are a couple of provisions of the bill that I want to look at.

First, in the Government's debt collection efforts, the bill weakens the privacy protection of most taxpayers at a time when most Americans are troubled about increasing Federal interference in their lives. And the enactment of this bill would lead to greater Government intrusion, not less.

Second, the bill overlooks a major cause of the problem in the $25 billion of delinquent debts. Over $13 billion represents delinquent income taxes.

S. 1249 does nothing to provide IRS with the tools necessary to collect unpaid taxes. IRS efforts in this area should be strengthened.

The budget cuts, the personnel and administrative burden imposed by measures such as S. 1249 threaten to hamper the Service in its performance of these tax duties.

Mr. Chairman, after listening to the witnesses and their testimony, I will have some questions concerning this bill.

Senator GRASSLEY. It is my pleasure at this time to introduce the Honorable Charles Percy, the Senator from the State of Illinois, who is the sponsor of this legislation. He has shown leadership in the area of legislation coming out of the Governmental Affairs Committee, as well as his distinguished service now as chairman of the Senate Foreign Relations Committee.

Senator Percy, welcome to the committee and thank you for your leadership in this area.

STATEMENT OF HON. CHARLES H. PERCY, U.S. SENATOR, STATE OF ILLINOIS

Senator PERCY. Thank you, Mr. Chairman, very much, and I appreciate very much the opportunity to be with you and Senator Baucus this morning to give me the opportunity to testify on the Debt Collection Act of 1981.

I am particularly gratified, Mr. Chairman, that you have seen fit to act so promptly in taking up this important legislation, and for your own support in cosponsoring S. 1249, and the support of nine other members of the Finance Committee.

We did agree in the chairman's meeting with Senator Baker that we would give highest priority this year to legislation that is supported by President Reagan. I have been extraordinarily pleased in contrast with last year when my legislation addressing this enormous problem stalled from lack of support from the Carter administration—denote that this year this administration, President Reagan, acting through David Stockman and Ed Harper of OMB, has moved swiftly and decisively in proposing tough legislation to crack down on debtors who renege on their obligation to repay the Government.

I think this legislation addresses the most shocking examples of waste in this management of public funds that I have encountered in 15 years as a U.S. Senator.

The Federal Government's failure to collect billions of dollars in unpaid loans, taxes, and other debts is a national outrage.

It is a slap in the face to the taxpayers of this country. In fiscal year 1979 alone, over $25 billion—more than half of what was due to be repaid that year—was not collected.

That amounts to about $275 for each taxpayer in the United States. Of the 10 largest lending agencies in the Federal Government, 5 had delinquency rates ranging from about 60 percent, to 1 agency that had a 97-percent delinquency rate.

Little wonder, therefore, that an administration that has had the courage to drastically reduce programs across the board in order to bring about fiscal sanity in this country—a measure that certainly will now reinforce and back up the President in Ottawa—in the most important conference that he has yet engaged in with the Chiefs of State of our major allies and friends.

But equally important that we address this problem of indebtedness because that money is terribly important to us.

The Debt Collection Act of 1981, S. 1249, introduced less than 2 months ago has attracted broad Senate support—33 cosponsors, one-third of the Senate. As I have indicated, nine members of this committee have cosponsored the bill and it has already been unanimously approved by the Senate Governmental Affairs Committee.

S. 1249 proposes 12 reforms to put some teeth into the Federal Government's lagging collection effort, 4 of which fall under the jurisdiction of the Finance Committee.

The bill was carefully drafted to provide Government agencies with new tools, many of which are used widely in the private sector to collect debts, while maintaining important privacy and due collection protection for debtors.

In marking up the bill last week in Governmental Affairs, a series of amendments were adopted to further strengthen these protections, many of which were suggested by the American Civil Liberties Union. We have greatly appreciated the assistance provided by the ACLU, and they have been a valuable organization in insuring us that the provisions we have carefully worked out with them and with OMB maintain the privacy rights of individuals.

The four provisions of the bill under the Finance Committee's jurisdiction comprise some of the key elements of the legislation. Before proceeding with discussing these provisions, I would like to stress it has never been our intent, in pursuing this legislation, to make the Internal Revenue Service a debt collection agency for the entire Federal Government.

Nor have we intended to unduly compromise the confidentiality of the tax return.

Throughout my career in the Senate, I have rejected unnecessary intrusions into an individual's tax return for purposes other than collecting taxes.

The voluntary nature of our tax system depends on this confidentiality.

The four provisions which we are asking for your support and which are under your jurisdiction are as follows:

First, the bill would allow Federal agencies to screen credit applicants against IRS lists of delinquent taxpayers to determine whether these applicants are indebted to the Government for unpaid taxes.

The objective of this proposal is quite simple. Government credit should not be unknowingly extended to a business or individual who has not paid his taxes. This concept is not new. State and local governments have denied services, licenses, and benefits to those who have not paid their taxes. I believe it is simply unfair to ask the taxpayers of the country to lend their tax dollars to those who have reneged already on their obligation to pay the taxes that are due and payable.

While this proposal would not establish an absolute means of denying credit to delinquent taxpayers, it would encourage those with unpaid taxes to pay them before receiving Government credit.

This process would give the IRS much needed support in collecting the $16 billion in overdue taxes, as was previously mentioned by Senator Baucus in his opening statement, as well as screen those who have previously defaulted on their obligations to pay the Government.

This provision was strengthened in the Government Affairs Committee to limit the information to be disclosed to other agencies to that which is necessary to determine whether or not there is a tax liability.

Also, this disclosure would be prohibited for delinquent taxes which are in dispute.

The second key provision would allow Federal agencies to redisclose to private contractors for debt collection purposes, addresses obtained from the Internal Revenue Service on delinquent debtors. This provision is critically important to effective Federal debt collection.

The single most important piece of information when collecting a debt is the debtor's current address. In recognition of this, the 1976 Tax Reform Act included a provision to permit Federal agencies to obtain addresses from the IRS as a means of locating debtors.

Thus, the Department of Education, for example, may go to the IRS to obtain a current address for a student loan debtor. This system has been very successful. The IRS addresses are about four times more reliable than other sources and about 12 times cheaper to obtain.

In 1980 alone, Federal agencies used the IRS service to locate 648,000 debtors. Every single one of us that has a mailing list knows the problem of keeping that list up to date.

With the movement of people, county to county, State to State, those lists become very quickly obsolete. The same is true with the Federal Government. With 340 some programs loaning money, they simply lose track of people. They simply don't get the notices and due diligence requires that we find out where those people have moved to.

Unfortunately, the IRS has insisted that the Tax Return Act of 1976 does not permit the Federal agencies to disclose these addresses to private collection agencies or consumer reporting agencies for debt collection purposes. Our greatest hope for collecting billions of dollars now overdue, is to make use of consumer reporting agencies, thereby affecting the private sector credit rating of those defaulting on Government debts and private collection agencies which can offer extremely effective collection services.

However, if barred from providing consumer reporting agencies and collection agencies with current addresses on hundreds of thousands of the Government debtees, the Government will be unable to make use of their desperately needed services.

OMB has conservatively estimated than unless Government agencies can redisclose these addresses to consumer reporting agencies, up to 30 percent of the delinquent debts that could have been collected would have to be simply written off.

I am confident this will not violate the established privacy of the taxpayer. Only the address would be allowed to be disclosed and the tax statutes already permit IRS addresses to be used for the purpose of collecting nontax debts.

This amendment would merely extend this disclosure to agents of the Government performing collection functions. This recognizes the fact that the Government, due to its enormous backlog of unpaid debts—$25 to $35 billion—must increasingly use collection agencies and credit bureaus to supplement its collection efforts.

Collection agencies receiving these addresses would be permitted to use them only for the purpose of collecting Government debts. They would be prohibited from using them for any collection of private debts—only Government debts.

The third key provision of this bill would raise the rate of interest on delinquent taxes to 100 percent of the prime rate and provide for an annual adjustment to the rate.

This annual adjustment of the full prime rate is needed to encourage prompt payment of taxes and to keep up with the broad fluctuations in the money market race.

In other words, if we don't have at least full prime, people can simply not pay and be borrowing the money from the Government at a rate less than they could ever get it from a commercial institution.

That is done so frequently we simply can't tolerate it any longer. They must pay at least the full prime rate, which is still lower than any of them would be able to obtain private financing.

Fourth, and finally, the bill would require social security numbers to be furnished by individuals who are applying for Government credit.

Currently the Privacy Act has been interpreted to prevent an agency from requiring an individual to supply their social security number. This prohibition just does not make sense for two reasons.

First, if I were to walk into any bank in Chicago to obtain a private loan or even a checking account, I would be required, any of us would be required, anyone in this room would be required, to supply a social security number.

Yet Uncle Sam, the world's largest lender, cannot require this number. This odd situation exists despite the fact that the Government has assumed a tremendous risk in lending to many of these individuals—a risk that no private lending institution would take.

Also, requiring social security numbers on credit applications would actually enhance protection provided to debtors.

With a social security number, agencies could better verify the identity of debtors, distinguish among them and insure that they would be properly notified before serious collection actions are taken.

A constant complaint of debtors is that they are not given adequate notice before serious steps are taken that are injurious to their own future credit standing and reputation.

Enactment of these provisions will move us closer to sound credit management in the Federal sector. We simply cannot afford to let another year go by without doing something about these unpaid debts.

If we do not crack down on those defaulting on a Government loan, or those failing to pay their taxes, how can we justify asking our honest constituents to make sacrifices to cut Federal spending?

What do we say to the straight A student at the University of Illinois, for instance, who is losing his student loan? Why should he sacrifice while those who are delinquent in paying back old student loans, an astonishing 81 percent of borrowers are not, 81 percent of all student loans are in default. Many of them, simply because we are not using what would be looked upon as an ordinary business procedure and due diligence in collecting those loans.

Let me mention one other consequence of allowing so many debtors, many of them young Americans, to ignore their obligations to repay their Government.

How can we expect them to respect their Government? What kind of example are we setting for them? I can understand, but I can't condone how we do let this happen.

Many of the nearly 2 million debtors from whom we will try to collect money may consider our remedies too tough. Ultimately, however, if the Government takes greater care in protecting the taxpayers' dollars, the debtors themselves will be better served. When we do not hold them responsible for Federal debts, they lose respect for their Government. They lose sight of the value of thrift and personal integrity.

And as a result they may someday make serious financial miscalculations. When we treat debts too casually, the harm done by failing to collect a loan may overshadow the benefits of the loan program in the first place.

I will conclude my statement by quoting from a recent Chicago Tribune editorial, one of dozens that appeared nationwide in support of this legislation.

> Given the Government's poor record of debt collection and the need to save money, these changes are long overdue.
>
> Government money has been so easy to obtain that many have come to regard a loan from the Government as a gift just as many others have come to regard a gift from the Government as a right to which they are morally entitled.
>
> This bill should help to correct this view of Uncle Sam as a soft touch, and at the same time save money of the taxpayers.

Mr. Chairman and Senator Baucus, I would like to thank you for this opportunity to appear today.

I urge your committee to promptly consider S. 1249, and send it to the Senate floor where Senator Baker and the leadership have assured me it will have swift action on the floor.

Every single day that goes by costs the Federal Government a large sum of money. Other provisions in the bill, which were not in the jurisdiction of this committee, allowed the Government to garnish wages. Can you imagine us sitting here without the ability that any private sector organization has to garnish the wages of employees. Here we sit with the Department of Education, with hundreds of employees sitting over there, many of them making $50,000 a year and for years they have refused to pay their own student loans debts back to their own Government. And the reason they are sitting over there is because they have got the education and at Government expense has enabled them to have the proficiency and capability of getting that job. And the Government seems powerless to even collect money from them at the time they are receiving their paycheck every single pay day.

Those things and other provisions of the bill that will stamp out abuses I think the people of this country will have more respect for their Government, if when we make a loan to them we insist as any private sector organization would that it be paid back.

Senator GRASSLEY. Thank you, Senator.

I have no questions, but I would like to comment before Senator Baucus maybe has some questions to ask you.

Only in the sense that—how clearly I agree with the points that were made in the closing paragraphs of your statement, in which you speak to the necessity of our upholding the rule of law, the respect for law.

Obviously, if we are going to change the pattern it is going to have to start here with the tools of government to bring that about.

And I think that it will go a long way towards correcting the attitude—the permissive attitude that people have towards paying debts, generally. Because obviously if they can get away with not paying the Federal Government, it is apt to be easy for them to get away without paying private individuals as well.

So I think that there is a motive here, not only helping to collect public debts, but also to create a better environment so that all unpaid bills will be honored to a greater extent.

And for your leadership in that area, I want to compliment you very much.

Senator Baucus?

Senator BAUCUS. Mr. Chairman. Senator, I understand that your committee made some changes in the bill because of some privacy problems raised by certain groups.

Are there any provisions presently in this bill which in any way give you any concern at this point, even though at this point, as I understand, you have amended the bill to satisfy most of the concerns raised by civil liberties groups?

Are there any remaining provisions at all that you——

Senator PERCY. As a matter of fact I wasn't concerned about it before the ACLU testified.

When they testified, I realized that we may have overlooked some of the private rights of individuals. So sitting down with them—and I directed staff immediately to sit down with ACLU and work it out with them.

And we walked in their shoes, leaning over backwards to protect privacy rights. We made modifications in the bill which satisfied their exacting standards and still met the tests that we put to them.

So I have no concerns about the bill. I think that every single provision has been very, very carefully looked at.

I wouldn't say that on the floor someone might not, or in this committee, might not think of something we have overlooked.

But I hope it would only be modifications in ways to enforce objective end goals. Because the objective end goal is absolutely essential now, in the light of our present fiscal circumstance.

Senator BAUCUS. As I understand the bill, the debt collection agency would be able to use addresses furnished by IRS, but the debt collection agency would be able to subsequently use those same addresses for collection of private debts, is that right?

Senator PERCY. No, the present arrangement is—and it is done in 600,000 cases in 1 year. Any Federal agency, and there are hundreds of them, can can go to IRS and help them—use their locater service to correct an address that is out of date.

An agency is able, under this bill, to go to a private service that is in that business, and say 'We have exhausted our ability to collect this debt. Will you, for a negotiated fee, go out and collect this debt?"

Today, without this bill, that agency would be prohibited from using the same services as IRS.

Under this bill, they could then go through their agency and go to IRS and find the address.

The bill, however, absolutely prohibits them from using that address in collecting a private debt other than the Government debt for which they have been contracted.

Senator BAUCUS. Let's assume that John Q. Citizen, for example, owes a debt to Uncle Sam, a certain Federal agency, and that agency goes to IRS to get the address.

The address of John Q. Citizen is then furnished by the agency to a private debt collection agency.

That agency contacts John Q. Citizen using the address furnished by the IRS through the agency to the debt collection agency and collects on the debt.

Let's assume that a year later, John Q. Citizen has an outstanding debt delinquent to some department store. The department store happens to go to the same debt collection agency.

That debt collection agency goes through its files and finds his address furnished basically by the IRS. May that collection use that address?

Senator PERCY. No, it may not.

Then the question comes up, how do you police this? I put the identical question to Alan Mertz, the staff professional on the Government Affairs Committee working on this.

But, we don't feel that it can be and should be used for private purposes.

Now, how do you enforce it?

First of all, the collection agencies' association are working closely with this. They have, like ABA and the American Medical Association, peer oversight, over the agencies that are members of their organization.

It would be an unethical business practice for them to use information they have obtained for a Government agency in the private sector. They will have to simply insure that they do not.

Now they may press and say, we would like a change in legislation allowing us to do it. Well, they have a perfect right to come down and change the law. But until such time as they get the law changed, they take a risk of making a violation.

And we can make that violation as stiff as we want it. Any employee in any agency could come up here, or a court, and testify—yes, this agency has abridged the code of conduct adopted by our association. It has abridged and violated the law. And they would stand in disrepute in the association.

They could possibly be forced out of the association. They could be subject to whatever violations are provided.

I think any reliable organization, and you should see the questionnaires that are being prepared now to go out to agencies to select private collection agencies and use them.

They are extensive, they are big, they wouldn't dare risk, as a matter of policy, breaching the law in order to just maybe provide a service to a private organization.

So there are all kinds of ways you can enforce it—probably much stiffer than you have been enforcing a lot of the laws we have.

Senator BAUCUS. I think basically, the bill performs a service that is needed for people to pay their bills.

I am just concerned that it would unnecessarily infringe upon individual liberties of private citizens.

Senator PERCY. Right, but you put your finger on the very point, the last point I raised with our own staff.

How do we enforce this?

And, it is like a lot of other things. There isn't an absolute enforcement, but you do the best you can. And I would tend to think that if any association or organizations—those that have testified before us would say peer review, code of ethics, the loss that the agency would incur if they violated that particular provision—a loss, for instance, of all Government contracts—would be too high a risk for them to take to just transfer between Government collection and private collection that kind of information.

Thank you.

Senator BAUCUS. Thank you.

Senator GRASSLEY. Senator Percy, thank you very much for speaking here today.

[The prepared statement of Senator Charles H. Percy follows:]

STATEMENT OF SENATOR CHARLES H. PERCY

Mr. Chairman, I would like to thank the distinguished members of this subcommittee for giving me this opportunity to testify this morning on The Debt Collection Act of 1981. I am especially grateful to you, Mr. Chairman, for acting so promptly in taking up this important legislation and for your support in cosponsoring S. 1249.

This legislation addresses the most shocking example of waste and mismanagement of public funds I have encountered in my fifteen years as a United States Senator. The federal government's failure to collect billions of dollars in unpaid loans, taxes, and other debts is a national outrage—a slap in the face to the taxpayers of this country. In fiscal year 1979 alone, over $25 billion, more than half of what was due to be repaid that year, was not collected. That amounts to about $275 for each taxpayer in the United States. Of the ten largest lending agencies in the federal government, five had delinquency rates ranging from about 60 percent to over 97 percent.

Last year, my legislation addressing this enormous problem stalled for lack of support from the Carter Administration. But this Administration, and this Senate, are different. President Reagan has moved swiftly and decisively in proposing this tough legislation to crack down on debtors who renege on their obligation to repay the government. The Debt Collection Act of 1981, S. 1249, introduced less than two months ago, has attracted broad Senate support—there are 33 cosponsors—and has already been unanimously approved by the Senate Governmental Affairs Committee.

S. 1249 proposes 12 reforms to put some teeth into the federal government's lagging collection effect, four of which fall under the jurisdiction of the Finance Committee. The bill was carefully drafted to provide government agencies with new tools, many of which are already used widely in the private sector, to collect debts, while maintaining important privacy and due process protections for debtors. In marking up the bill last week in Governmental Affairs, a series of amendments were adopted to further strengthen these protections, many of which were suggested by the American Civil Liberties Union. We have greatly appreciated the assistance provided by the ACLU.

The four provisions of the bill under the Finance Committee's jurisdiction comprise some of the key elements of the legislation. Before proceeding with discussion of these provisions, I would like to stress that it has never been our intent in pursuing this legislation to make the Internal Revenue Service a debt collection agency for the entire federal government, nor have we intended to unduly compromise the confidentiality of the tax return. Throughout my career in the Senate, I have rejected unnecessary intrusions into an individual's tax return for purposes other than collecting taxes. The voluntary nature of our tax system depends on this confidentiality.

The four provisions which we are asking for your support are as follows:

First, the bill would allow federal agencies to screen credit applicants against IRS lists of delinquent taxpayers to determine whether these applicants are indebted to the government for unpaid taxes. The objective of this proposal is quite simple: government credit should not be unknowingly extended to a business or individual who has not paid his taxes. This concept is not new—state and local governments have denied services, licenses, and benefits to those who have not paid their taxes. I

believe that it is simply unfair to ask the taxpayers of this country to lend their tax dollars to those who have reniged on their obligation to pay their taxes. While this proposal would not establish an absolute means of denying credit to delinquent taxpayers, it would encourage those with unpaid taxes to pay them before receiving governmental credit. This process would give the IRS much-needed support in collecting the $16 billion in overdue taxes, and screen those who have previously defaulted on their obligations to pay the government. This provision was strengthened in the Governmental Affairs Committee to limit the information to be disclosed to other agencies to that which is necessary to determine whether or not there is a tax liability. Also, this disclosure would be prohibited where delinquent taxes are in dispute.

The second key provision would allow federal agencies to redisclose to private contractors, for debt collection purposes, addresses obtained from the Internal Revenue Service on delinquent debtors. This provision is critically important to effective federal debt collection. The single most important piece of information when collecting a debt is the debtor's current address. In recognition of this, the 1976 Tax Reform Reform Act included a provision to permit federal agencies to obtain addresses from the IRS as a means of locating debtors. Thus, the Department of Education, for example, may go to the IRS to obtain a current address for a student loan debtor. This system has been very successful: the IRS addresses are about four times more reliable than other sources, and about 12 times cheaper to obtain. In 1980 alone, federal agencies used the IRS service to locate 648,000 debtors.

Unfortunately, the IRS has insisted that the Tax Reform Act of 1976 does not permit federal agencies to redisclose these addresses to private collection agencies or consumer reporting agencies for debt collection purposes. Our greatest hope for collecting billions of dollars now overdue is to make use of consumer reporting agencies, thereby affecting the private sector credit rating of those defaulting on government debts, and private collection agencies, which can offer extremely effective collection services. However, if barred from providing consumer reporting agencies and collection agencies with current addresses on hundreds of thousands of the government's debtors, the government will be unable to make use of their desperately needed services. OMB has conservatively estimated that unless government agencies can redisclose these addresses to consumer reporting agencies, up to 30 percent of the delinquent debts that could have been collected would have to be written off.

I am confident that this will not violate the established privacy of the taxpayer. Only the address would be allowed to be disclosed, and the tax statutes already permit IRS addresses to be used for the purpose of collecting non-tax debts. This amendment would merely extend this disclosure to "agents" of the government performing collection functions. This recognizes the fact that the government, due to its enormous back-log of unpaid debts, $25 to $35 billion, must increasingly use collection agencies and credit bureaus to supplement its collection efforts. Collection agencies receiving these addresses would be permitted to use them only for the purpose of collecting government debts.

The third key provision of this bill would raise the rate of interest on delinquent taxes to 100 percent of the prime rate and provide for an annual adjustment to the rate. This annual adjustment at the full prime rate is needed to encourage prompt payment of taxes and to keep up with the broad fluctuations in the money market rates.

Fourth and finally, the bill would require social security numbers to be furnished by individuals who are applying for government credit. Currently, the Privacy Act has been interpreted to prevent an agency from requiring an individual to supply his social security number. This prohibition just does not make sense for two reasons: First, if I were to walk into a bank in Chicago to obtain a private loan, or even a checking account, I would be required to supply my social security number. Yet Uncle Sam, the world's largest lender, cannot require this number. This odd situation exists despite the fact that the government has assumed a tremendous risk in lending to many of these individuals—a risk that no private lending institution would take. Also, requiring social security numbers on credit applications would actually enhance protections provided the debtor. With the social security number, agencies could better verify the identity of debtors, distinguish among them, and ensure that they would be properly notified before serious collection actions are taken.

Enactment of these provisions will move us closer to sound credit management in the federal sector. We simply cannot afford to let another year go by without doing something about these unpaid debts. If we do not crack down on those defaulting on a Government loan, or those failing to pay their taxes, how can we justify asking our honest constituents to make sacrifices to cut federal spending? What will we say

to the straight-A student at the University of Illinois, for example, who is losing his student loan? Why should he sacrifice while those who are delinquent in paying back old student loans, an astonishing 81 percent of the borrowers, are not?

Let me mention one other consequence of allowing so many debtors, many of them young Americans, to ignore their obligation to repay their Government. How can we expect them to respect their Government? What kind of example are we setting for them? I can understand, but I cannot condone, how we let this happen.

Some of the nearly two million debtors from whom we will try to collect money may consider our remedies too tough. Ultimately, however, if the government takes greater care in protecting the taxpayers' dollars, the debtors themselves will be better served. When we do not hold them responsible for federal debts, they lose respect for their government, they lose sight of the value of thrift and personal integrity, and—as a result—they may someday make serious financial miscalculations. When we treat debts too casually, the harm done by failing to collect a loan may overshadow the benefit of the loan program in the first place.

I will conclude my statement by quoting from a recent Chicago Tribute editorial, one of dozens which have appeared nationwide in support of this legislation: "Given the government's poor record of debt collection and the need to save money, these changes are long overdue. Government money has been so easy to obtain that many have come to regard a loan from Washington as a gift, just as many others have come to regard a gift from the government as a right to which they are morally entitled. (This) bill should help to correct this view of Uncle Sam as a soft touch and, at the same time, save money of the taxpayers."

Mr. Chairman, I would like to thank you again for this opportunity to appear today. I urge that your Committee promptly complete consideration of S. 1249 and send it on to the Senate floor.

Senator GRASSLEY. It is now my pleasure to call to the witness stand, Joseph T. Davis, Acting Commissioner of Internal Revenue. And I understand that Commissioner Egger was not able to be here today, so we welcome you as a representative of the Internal Revenue Service.

You will have 10 minutes to present either your testimony or a synopsis of your testimony.

STATEMENT OF MR. JOSEPH T. DAVIS, ACTING COMMISSIONER OF THE INTERNAL REVENUE SERVICE

Mr. DAVIS. Mr. Chairman, I am Joe Davis. Today I am Acting Commissioner of Internal Revenue.

Commissioner Egger regrets that he wasn't able to be here personally to testify.

I have with me Eddie Heironimus, Assistant Commissioner for Taxpayer Service and Returns Processing, David Dickinson from the Office of the Chief Counsel, and on my far right is Daniel Capozzoli, the Director of our Tax Systems Division in our data services function.

I am pleased to appear this morning before your committee to express the Service's support for S. 1249, the Debt Collection Act of 1981.

This bill would directly impact upon the Service in two ways: First, by changing the rate of interest both charged and paid by the Service; and second, by requiring the disclosure of certain limited IRS information to assist in the management and collection of the Federal Government's nontax management.

S. 1249 would amend the interest provision of the Internal Revenue Code so that the rate would be changed on an annual basis rather than biennially as under current law and the interest rate would be tied to 100 percent of the prime rate rather than the current 90 percent.

The Service has consistently adhered to the position that the interest on tax due is not a penalty but only a charge for the use of funds.

To the extent that the rate is made more responsive to marketplace changes and more fully reflects the marketplace rate, we would expect greater compliance with the prescribed payment provisions by prudent individuals and members of the business community.

We would, therefore, hope that such a change will assist us in improving our accounts receivable program.

The House Ways and Means Committee, on a bipartisan vote, has recently adopted a similar interest provision. The Ways and Means provision, however, would allow semiannual interest rate changes and provides for rate changes to be effective on January 1, rather than February 1, as currently.

The Service initially questioned such changes because of the data processing problems involved, but has now determined that our computer systems can accommodate such changes and we would support them. Because of computer leadtimes, however, we would not support the change from February to January until 1983.

Section 7(a) of S. 1249 provides that certain limited tax liability information regarding applicants for Federal loans may be disclosed to other Federal agencies.

The purpose of the provision is to screen potential borrowers so that the existence of a tax delinquency may be taken into account in the decision to extend Federal credit.

This provision also should give taxpayers incentive to square overdue tax accounts with the IRS. The Service does not object to this provision.

Section 7(b) provides for the disclosure of mailing addresses held by the Service to Federal agencies or their agents in order to locate delinquent debtors to collect Federal claims.

This provision would allow a Federal agency to disclose the IRS mailing address for the debtor to a private collection agency hired to collect the debt for the Federal agency.

The IRS address could also be given to a credit bureau in order to obtain a statement of a debtor's net worth so that the Federal Government could determine if further collection efforts would be productive. However, the provision would not allow the credit bureau to retain or use the IRS address for any other purpose.

For example, the credit bureau could not retain or use the IRS address to facilitate collection of private debts. Use of the IRS address for any other purpose would be a Federal criminal violation and could subject the violator to a civil damage suit by the debtor.

In this regard it should be noted that section 3 of the bill, which allows certain disclosures to credit bureaus, does not allow a Federal agency to disclose an IRS address to a credit bureau under circumstances other than those described in section 7(b).

The Service is aware of and sensitive to taxpayers' concerns with regard to making taxpayer return information available to the private collection and credit bureau industry.

The entire administration is in agreement that wholesale use of taxpayer return information in an unbridled effort to collect debts

arising out of the panoply of Federal benefit programs could create undue hardships on beneficiaries and jeopardize our self assessment tax system.

However, the sheer magnitude of the overdue Federal debts is so great and the disclosure of taxpayer return information so narrowly drawn in S. 1249, that the administration believes that a reasonable balance of public and private interest has been struck.

This conclusion is reinforced by the expectation that existing criminal and civil sanction safeguards in existing law against unauthorized redisclosure of IRS address information by collection agencies and credit bureaus may be sufficient to deter such misuse.

There is another area of valid concern about which we are not capable of predicting the impact—public perceptions.

How will the public view the IRS in these nontax transactions?

Even though you and I know that only address information is being disclosed, and then only for limited purposes, it is entirely possible the public perception could be of a greater Service involvement.

On the other hand, the public perception could be positive in the sense that collection of nontax debts lessens the burden on a large majority of taxpayers who are not delinquent on nontax indebtedness.

What will happen in this regard, we do not know and will have to wait for actual experience to inform us.

Again, we agree with the decision of the administration from a public policy standpoint.

Mr. Chairman, this concludes my prepared remarks.

My associates and I will be pleased to try and answer any questions you or the Members may have.

Senator GRASSLEY. Thank you very much.

I appreciate your testimony and the position of the administration.

We do have some questions.

First of all, do you think that delinquent tax liability is a sufficient ground to deny other Government credit to individuals?

Mr. DAVIS. I think that tax delinquency is an important consideration in denying the credit application of individuals who are coming to the Federal Government for loans.

Senator GRASSLEY. Do you believe the provisions of this bill will impact current withholding patterns of individuals or cause individuals to misrepresent their addresses on 1040 or other filings and therefore, adversely impact the collection of taxes?

Mr. DAVIS. We really don't know, Mr. Chairman.

I think it is a concern that we have, but we really don't know what change we will see in filing patterns.

It is a concern we have and obviously if this concern develops into a problem we would be back to discuss it.

Senator GRASSLEY. I don't know of any precedent, but maybe you ought to correct me if I am wrong.

There isn't any precedent for what we are thinking about doing here; any administrative procedures that the IRS has had with any other organizations that to the exchange of this type of information between bureaucracies in the past?

Mr. DAVIS. In the past, when we have shared information with other agencies, we have done what we call safeguard reviews.

There have been some lapses in the care of the information. But when we have brought this to the attention of agency and recommended specific actions for them to take to be sure that it was properly secured, they have followed through on this.

Senator GRASSLEY. So really, to this point, we have experience with whether or not this has had an impact on the collection of taxes?

Mr. DICKINSON. That is true Mr. Chairman, it is difficult to quantify, as you can understand.

Now, let me add something to what Mr. Davis said on the effect on the withholding system. That becomes a concern if a tax offset mechanism is used. because taxpayers entitled to refunds can easily adjust their withholding to eliminate the tax refund, and thereby escape offsetting the delinquent Federal debt.

Senator GRASSLEY. There is a need to place additional procedures in this bill to insure that IRS addresses are not misused by either credit bureaus or collection agencies.

In other words, is there a need to place additional procedures in this bill so that there isn't a misuse by either credit bureaus or collection agencies?

Mr. DAVIS. We believe right now we can live with the bill the way it is drafted.

Obviously, we will monitor the information that is shared with other agencies, and again, if we have any problems with it, we would be back.

Senator GRASSLEY. I want to ask you again, although you just, in the previous question referred to this to some extent.

But I have a specific question on what is your experience with respect to the disclosure of IRS addresses to Federal agencies?

Mr. DAVIS. Our experience up to today has been OK.

We haven't had enough time and really enough experience to reach any conclusions other than that we believe we can live with this bill the way it is drafted.

Senator GRASSLEY. Based upon whatever experience you have had, as small as it has been, what do you expect private parties who have financial interests to do with IRS addresses.

In other words, do you expect them to be used for anything other than the intended purpose?

Mr. DAVIS. I think at this point we would suggest that the sanctions with respect to disclosure are such, that they would be a very strong disincentive to anyone likely to misuse the information.

Plus, several of the things that Senator Percy said in his comments.

Senator GRASSLEY. It seems like lately, maybe over a longer period of time than just lately, quite frankly, the IRS has been under attack for abuse of power.

Do you believe this bill will increase the allegations facing the IRS?

Mr. DAVIS. We would certainly hope not.

As a tax collection agency of the Government we don't ever really expect to be loved.

But we would hope that any criticism of the way we do business would be based in fact and not in mythology—or not based on unfounded observation that some folks may make.

Senator GRASSLEY. Do you have any reason to believe that this bill might or might not compromise the integrity of the IRS in such a way that it undermines the confidence of the American people in our tax system since that confidence is so necessary for the voluntary compliance of tax laws?

Mr. DAVIS. We don't think so at this time.

There is a possibility that taxpayers may shift addresses, but we don't know that for a fact.

These are concerns we have at this time, but we don't think this will compromise the position of the Service.

Senator GRASSLEY. My last question follows up on some points that Senator Baucus and I made, I believe it was in the month of March, when we were debating the Treasury provision of the first budget—or the budget reconciliation bill.

We pointed out how we hope that in the process of budget reallocation, that there would not be so much a diversion of personnel and attention away from IRS as to undermine voluntary compliance with our tax laws. This obviously is the basis for the system working—otherwise it would simply break down.

So I ask this question in relation to this bill. I gave you that background so that you know that Senator Baucus and I have been concerned about this resource issue.

Since this bill will require IRS personnel to perform many services they are not presently performing, will the bill require you to reallocate your personnel in such a way that time spent auditing returns and performing other functions will be reduced?

Mr. DAVIS. At this point in time, we haven't made any resource estimates in a specific way, Mr. Chairman.

But I would like to ask that Mr. Heironimus, who has the returns processing responsibility in the Service, to make some comments. And then Mr. Capozzoli, who has data services responsibility.

Senator GRASSLEY. Mr. Heironimus?

Mr. HEIRONIMUS. Mr. Chairman, it is difficult to say at this particular point in time what resource allocations will be necessary, if any.

Questions such as the timing of the release of this data, a manual versus a mechanized system, whether both the individual and the business taxpayer will be affected are still unanswered.

And until we can zero in on those, it is difficult to say.

Senator GRASSLEY. I guess I must ask, maybe it would be natural for you to wait to see if the legislation is going to pass before you make these determinations.

But haven't you felt a necessity to think in terms of what the bill might roughly require in dollar terms so you could determine whether or not, you know, it is going to take so many people, or so many employees' hours per year to satisfy the requirements of the law. You must have some way of determining the number of agencies involved, the number of requests they might make, how much computer time that will take versus actual employee time.

You don't have any rough idea at all?

Mr. DAVIS. I don't—we haven't gotten down to those kinds of specifics, Mr. Chairman.

Senator GRASSLEY. Well, then maybe one thing that can be satisfying to us at this point, is it a concern?

When I say a concern, I don't mean that if you would say "No" to that, that I would hold you responsible for not being on top of the problem.

But, maybe it is fairly minor, and yet we don't perceive it as Senators to be minor.

Maybe it is so minor in your total overall administraion that it isn't necessary to think about it in advance.

But has there been any thought given to it?

Mr. DAVIS. Yes, there has; and obviously we are concerned any time we get a new responsibility where we don't have or get the resources we need to do the job.

But as you know, our 1982 budget is presently under consideration in the Congress. We would have to explore some of the things that Mr. Heironimus is talking about. We have some specific things to do in the data processing area to get a better definition of what the workload would be and what it would take for us to accomplish it.

We aren't down to those specifics.

Mr. CAPOZZOLI. We have looked at it to some degree, Mr. Chairman. We feel that we have the computer capacity to be able to do the job.

As you know, we have under current law disclosed similar information to other agencies such as the Department of Education. So we have a general procedure which we can follow. So in implementing this bill we would just enhance that procedure for other Government agencies. We would have to build additional programs for them.

As far as the interest provision is concerned it requires some changes for us. We are in the process of changing and testing the computer programs which will be operational during calendar year 1982.

And that is why we have requested that the February date be retained for 1982. We didn't want January for 1982. By 1983 we can build a more flexible program so that we can accommodate a January rate change and make this change more quickly.

So we have been looking into all these changes. They will not require a major change in our data processing operations. Only when we know how many agencies we have to service will we be able to get a better feel for the workload impact.

Senator GRASSLEY. Let me first of all indicate to you that I don't pretend to have an understanding of the sophistication of computer operations today.

But 2 years ago, many people weren't reporting all of their income and were making applications for food stamps, or AFDC. There was a project the State of Michigan used in which they simply ran two computer tapes to see if State employees were on the welfare rolls.

It seemed to me that somewhere along the line you get down to that point even though with a larger number of people, comparing those who are making an application for Government loans against

those who are on the tax rolls or those who are delinquent compared to those who are on the tax rolls—isn't that basically what is involved?

Mr. CAPOZZOLI. Yes, that is exactly what we would be doing to help other agencies screen credit applicants.

We would get identifying information from the agency and make a comparison against our files.

Senator GRASSLEY. Then for the giving out of addresses, isn't it as simple as running a computer tape to the Government agency that requests the information and then in turn they give it out to the collection agency?

Mr. CAPOZZOLI. Yes, the way we operate today is that we receive social security numbers from a department and then furnish them with a reel of tape containing addresses.

They take it and process it through their system. So we do do these processes today, to some degree.

Senator GRASSLEY. Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Davis, does the IRS use private collection agencies?

Mr. DAVIS. No, we do not.

Senator BAUCUS. Why don't you?

Mr. DAVIS. It hasn't been authorized by law.

Senator BAUCUS. Have you thought about seeking that authorization?

Mr. DAVIS. There has been a great deal of discussion and thought in the last 3 years as to whether or not we could effectively use private debt collection agencies with respect to tax delinquencies.

We have analyzed what they could do versus what we can do, and the conclusion to date has been is that it wouldn't be as effective as our own system.

Senator BAUCUS. Your conclusion to date is that the system is more effective when the IRS collects its own debts than if it would contract it out to private collection agencies?

Mr. DAVIS. Yes.

Senator BAUCUS. What is your collection rate right now? What percentage of taxes owed does IRS collect?

Mr. DAVIS. I would prefer to submit the figures for the record, Senator Baucus.

Senator BAUCUS. Do you have a rough guess, at this point?

Mr. DAVIS. No, I don't have it.

Senator BAUCUS. Do any of you gentleman have a rough guess? Five percent, ninety percent?

Mr. DAVIS. Percentagewise, the uncollected amount is very, very small.

Senator BAUCUS. Excuse me?

Mr. DAVIS. Percentagewise it is very small.

Of the total revenue collected, the percent of delinquent accounts is relatively small.

Senator BAUCUS. That is, of the taxes that are delinquent, have been delinquent say a year—the amount the Service collects is very small?

Mr. DAVIS. The percent that we collect is quite high, and that is why I would prefer to give you the whole breakdown, for the record.

Senator BAUCUS. What I am trying to determine is this.

If the IRS does not seek the services of private collection agencies, why would other Federal agencies?

Why couldn't they do it in-house?

Why do they need private collectors?

Mr. DAVIS. Well, I'm not sure the analogy is specifically appropriate since one of our primary responsibilities is the collection of the revenue. And the primary responsibilities of other agencies, for the most part, is quite different. And it would take people, collection procedures, and a strong program on the part of the other agencies to undertake the collection of delinquent nontax debts.

Mr. DICKINSON. Senator, let me add something there.

As you know, we have collection powers far beyond those available to other agencies. And because we historically have had these powers, the collection process, for us, is not quite the problem that it may be for other agencies.

Senator BAUCUS. I understand, and I intend to agree. Because your powers are greater you inherently don't need the services of private agencies.

Let me turn to another question. In the bill, section 7(a) says essentially that upon the request of a Federal agency the Secretary of the Treasury may disclose to officers and employees of Federal agencies return information relating to the amount of any outstanding liabilities of the Federal loan applicant relating to tax interest, penalty, interest fine or other imposition under this title.

It goes on in the next paragraph to state "The Secretary shall disclose return information" under 7(a) "wholly for the purpose of and to the extent necessary for determining the outstanding liabilities applicable for a Federal loan."

My question is what will that mean in your judgment?

That is, how much return information would the Service disclose to a Federal agency?

Mr. DICKINSON. Well, Senator, as S. 1249 was introduced, it provided for the disclosure of the amount of tax delinquency.

As I understand the bill, as ordered reported by the Committee on Governmental Affairs, it would only be the fact of delinquency, not the amount.

And I may be mistaken. I haven't seen the bill as ordered reported.

Senator BAUCUS. Well, I just read you the bill.

[Pause.]

Senator BAUCUS. I am told there are other amendments. I don't know what they are though. Maybe somebody on your staff could tell us what those amendments are.

[Pause.]

Senator BAUCUS. I am told by the staff that you are correct.

It is only the fact of the liability that is disclosed. My concern is that the current bill gives the amount of the liability. My concern is that if that is disclosed to an agency, and consequently to a private debt collection agency, that the underground economy might grow a little larger.

Before people begin to realize that more and more information of their tax return is out in the public domain.

Mr. DICKINSON. I think we would agree with that.

Senator BAUCUS. I am a little concerned about the use of the prime rate so far as the prime rate is not that fixed. That is, somewhat illusory, shifting. You know how many banks charge customers rates lower than the prime rate. The prime rate is not what most people think it is. That is, the lowest rate the banks charge to their customers.

I guess my basic concern is tying interest rates to something which the Service doesn't have that much control over.

It might be commercial banking practices to lower their prime rate on the average compared to the lending rates that it's charging or for some reason—I don't know what the reason might be—but it might be very high.

I am just concerned that the Services pegging the rate on something over which basically the Service has no control.

Do you care to comment on that?

Mr. DAVIS. Well, we are presently tied to 90 percent of the prime rate.

Senator BAUCUS. I understand that.

Mr. DAVIS. One of the strongest recommendations of our own collection people is to see if we could get 100 percent of the prime rate, because there is a strong feeling that it would help us in our accounts receivable effort.

Senator Percy alluded to the fact that if you owe taxes you can get a low interest rate loan by not paying them. So our own position is that we think it will help improve our accounts receivables effort by tying our interest rate to 100 percent of the prime rate.

Senator BAUCUS. Are there any provisions in this bill which bother you in any way, whatsoever, from the Service's point of view?

When you drove over here this morning and you were thinking about this hearing, what was it that kind of popped into your head that bothered you a little bit about this bill?

Mr. DAVIS. We have obviously thought about it a lot. And we have had a lot of discussions internally about it.

I earlier commented that at this point in time we believe we can live with the provisions because they are so narrowly drawn. We think that the Service can administer its part of it properly.

Senator BAUCUS. I don't mean to give you a hard time or disagree with you.

But to live with something is a little different than saying that something bothers you.

What is it that you are willing to live with but by that definition, therefore, is something that you didn't ask for?

Mr. DAVIS. Well, because we don't have experience in some of the areas, it is pretty difficult to predict the outcome.

As I indicated earlier, in the past when we have brought to the attention of other agencies any defects in their safeguarding information that we have shared with them, they have followed through and corrected those things.

We could monitor the provisions of this legislation with respect to our responsibility, and try to insure that we comply with requirements of the law and insure that other agencies who will be getting address information, for example——

Senator BAUCUS. I guess what would bother me if I were in your shoes is that this bill is taking a step toward the IRS using the IRS for nontax purposes.

Or, as the Service moves in that direction, the more problems the Service is going to have. Isn't that a major concern?

Mr. DAVIS. It is a concern. Obviously, it is a concern.

Senator BAUCUS. To what degree do you think the Service should move in this direction? That is, to be used for nontax purposes?

Mr. DAVIS. Well, I think it has to be determined as a matter of public policy as to what steps, if any, are going to be taken with respect to——

Senator BAUCUS. I am asking you because you are more familiar with the operation of the Service than am I.

Are you a strong defender of the principle that IRS should not at all be used for nontax purposes or do you think that it should be used significantly for nontax purposes?

I am just trying to get a sense from you to the degree to which we, the legislative body here, should be concerned about using the IRS for nontax purposes.

I am asking your guidance.

Mr. DAVIS. I think that any professional that grew up in the Service would be generally opposed to the use of the Internal Revenue Service for nontax purposes.

On the other hand, I think that anybody who has grown up in the Service and is confronted with the situation you are confronted with today—with the $175 billion in debts owed the Government—might reexamine that policy very closely.

Senator BAUCUS. In your judgment, the Service can take a few steps in that direction without running into problems?

Mr. DAVIS. I believe so.

Senator BAUCUS. Thank you.

Senator GRASSLEY. Thank you. We appreciate you and your staff coming before the committee to give us your views on this legislation, and such views will be considered by the Finance Committee as we determine the outcome of this bill.

[The prepared statement of Joseph T. Davis follows:]

OPENING STATEMENT OF JOSEPH T. DAVIS, ACTING DEPUTY COMMISSIONER OF INTERNAL REVENUE

Mr. Chairman and Members of the Subcommittee, I am accompanied by Eddie Heironimus, Assistant Commissioner for Taxpayer Service and Returns Processing, and David Dickinson from the Office of the Chief Counsel.

I am pleased to appear this morning before your Committee to express the Service's support for S. 1249, the Debt Collection Act of 1981. This bill would directly impact upon the Service in two ways: first, by changing the rate of interest both charged and paid by the Service; and second, by requiring the disclosure of certain limited IRS information to assist in the management and collection of the Federal Government's nontax debt.

S. 1249 would amend the interest provision of the Internal Revenue Code so that the rate would be changed on an annual basis rather than biennially as under current law and the interest rate would be tied to 100 percent of the prime rate rather than the current 90 percent. The Service has consistently adhered to the position that the interest on tax due is not a penalty but only a charge for the use of funds. To the extent that the rate is made more responsive to marketplace changes and more fully reflects the marketplace rate, we would expect a greater compliance with the prescribed payment provisions by prudent individuals and members of the business community. We would, therefore, hope that such a change will assist us in improving our accounts receivable program.

The House Ways and Means Committee, on a bipartisan vote, has recently adopted a similar interest provision. The Ways and Means provision, however, would allow semiannual interest rate changes and provides for rate changes to be effective on January 1 rather than February 1, as currently. The Service initially questioned such changes because of the data processing problems involved, but has not determined that our computer systems can accommodate such changes and we would support them. Because of computer lead times, however, we would not support the change from February to January until 1983.

Section 7(a) of S. 1249 provides that certain limited tax liability information regarding applicants for Federal loans may be disclosed to other Federal agencies. The purpose of the provision is to screen potential borrowers so that the existence of a tax delinquency may be taken into account in the decision to extend Federal credit. This provision also should give taxpayers further incentive to square overdue tax accounts with the IRS. The Service does not object to this provision.

Section 7(b) provides for the disclosure of mailing addresses held by the Service to Federal agencies or their agents in order to locate delinquent debtors to collect Federal claims. This provision would allow a Federal agency to disclose the IRS mailing address for the debtor to a private collection agency hired to collect the debt for the Federal agency. The IRS address could also be given to a credit bureau in order to obtain a statement of a debtor's net worth so that the Federal government could determine if further collection efforts would be productive. However, the provision would not allow the credit bureau to retain or use the IRS address for any other purpose. For example, the credit bureau could not retain or use the IRS address to facilitate collection of private debts. Use of the IRS address for any other purpose would be a Federal criminal violation and could subject the violator to a civil damage suit by the debtor. In this regard it should be noted that section 3 of the bill, which allows certain disclosures to credit bureaus, does not allow a Federal agency to disclose an IRS address to a credit bureau under circumstances other than those described in section 7(b).

The Service is aware of and sensitive to taxpayers' concerns with regard to making taxpayer return information available to the private collection and credit bureau industry. The entire administration is in agreement that wholesale use of taxpayer return information in an unbridled effort to collect debts arising out of the panoply of Federal benefit programs could create undue hardships on beneficiaries and jeopardize our self assessment tax system. However, the sheer magnitude of the overdue Federal debts is so great and the disclosure of taxpayer return information so narrowly drawn in S. 1249, that the Administration believes that a reasonable balance of public and private interest has been struck.

This conclusion is reinforced by the expectation that existing criminal and civil sanction safeguards in existing law against unauthorized redisclosure of IRS address information by collection agencies and credit bureau may be sufficient to deter such misuse.

There is another area of valid concern about which we are less capable of predicting the impact—public perceptions. How will the public view the IRS in nontax transactions? Even though you and I know that only address information is being disclosed, and then only for limited purposes, it is entirely possible the public perception could be of a greater Service involvement. On the other hand, the public perception could be positive in the sense that collection of nontax debts lessens the burden on a large majority of taxpayers who are not delinquent on nontax indebtedness. What will happen in this regard, we do not know and will have to wait for actual experience to inform us. Again we agree with the decision of the Administration from a public policy standpoint.

Mr. Chairman, this concludes my prepared remarks. My associates and I will be pleased to try and answer any questions you or the members may have.

Senator GRASSLEY. It is now my pleasure to call to the witness table Mr. Edward L. Harper, Deputy Director of the Office of Management and Budget.

Welcome, Mr. Harper, again, and I would appreciate it very much if you would introduce your colleagues who are with you.

STATEMENT OF MR. EDWIN L. HARPER, DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

Mr. HARPER. Mr. Chairman, I am pleased to do so.

I have with me to my left Mr. Harold I. Steinberg, who is the Associate Director for Management of the Office of Management

and Budget, and to my right I have Mr. Gerald Bridges, who has been the staff director of the debt collection project of the Office of Management and Budget.

Mr. Chairman, if I may suggest, I would like to submit my written statement for the record, and perhaps just summarize that in the interest of brevity.

Senator GRASSLEY. That is fine. Thank you very much.

Mr. HARPER. I think the problem that we face today has been well stated by Senator Percy.

The General Accounting Office and the Office of Management and Budget have for years been concerned about the problem of debts owed the Federal Government. In September 1979, over $175 billion was owed the Federal Government. Our recent interim estimates put the current figure at over $200 billion as of September 1980. I call your attention to the fact that our most recent figure is basically a guestimate. The 1979 figure is the last figure we have in which we have some real confidence.

One of the major problems we have in the entire debt collection area is information. Over the years, insufficient resources have been allocated to the problem of tracking Federal debts.

We have also had a fairly inefficient litigation process, and we have had some laws and some regulations which have hampered our effectiveness in collecting those Federal debts.

The President recognized the need. He felt it was clearly unfair for the average taxpayer to be supporting a cost of $10 million a day in unnecessary interest payments—interest payments created by persons who are irresponsible; basically deadbeats who were failing to pay debts justly owed the Federal Government.

As a result of the President's actions, he requested each of the major executive agencies to prepare plans to collect Federal debts. The Office of Management and Budget has now received preliminary plans, I believe, from all but two of the major agencies, and we are working on the plans with the agencies to quickly implement systems in each agency for collecting delinquent Federal debts.

We think the Federal debt collection legislation we are talking about today is a very important matter, because it will enable us to use some of the fairly effective private sector techniques in collecting debts.

Four items in particular have been cited. First is the use of social security numbers. I think one important aspect of this is that we are going after the right person and not the wrong person. I think that there would be nothing more aggravating to a citizen of the United States than for him to be unjustly accused by a Government agency of being delinquent in his debts to the Government. The use of the social security numbers is one way to make sure that we don't do that.

I think also the screening of applicants for Federal debt is just plain commonsense, some commonsense which the Federal Government has not been using in the past.

The redisclosure of IRS addresses, I think is an important facilitating factor because of cost, accuracy and the potential savings, that is the accuracy of IRS addresses compared to other sources. For example, in one sample survey we found that 81 percent of the

addresses supplied by the IRS were correct, whereas only 23 percent were correct from the other available sources. The cost of getting those addresses from the IRS was about 11 cents per address versus $1.25 per address from other sources.

But most importantly, we believe that by using those addresses we will be able to collect $360 million that otherwise probably would not be collectible; $360 million that otherwise would have to be paid by America's taxpayers into the Treasury to make up for those delinquent payments.

I think, finally, the fourth point, raising the interest rate—unless that is done, basically the Federal Government and specifically the average taxpayer is providing a subsidy to deadbeats, and I think that is fundamentally wrong.

With respect to the use of social security numbers, what we are asking in the legislation is to require individuals to provide their social security numbers when they apply for Federal credit.

The Privacy Act presently prohibits requiring social security numbers in most cases. We feel, as I have indicated, that this is essential to identifying and treating debtors and making sure we get the right person and not the wrong person when we are pursuing those delinquent debts.

With respect to the screening of credit applications, I think one key point here, that perhaps is a partial response to Senator Baucus' earlier concern, is that screening credit applications against the IRS files of delinquents may in fact help the IRS collect some of the delinquent taxes which amount to some $16 billion.

Specific tax information, of course, would not be released. We would also, of course, recognize that just because somebody had some delinquent taxes due the Government does not mean that they would be automatically disqualified from receiving a loan. But it would certainly be a factor brought into play in the judgment of whether or not to go ahead with that loan application.

I think the main point here is that we just don't want to blunder into handing out funds from the Treasury to people who are perennial debtors.

The redisclosure of IRS addresses—this is important because the IRS does have the most complete and accurate source of addresses. We believe that the protections provided in the legislation as reported out are adequate and appropriate.

With respect to the rates of interest, here we are talking about raising the rates, essentially in line with time and doing this on an annual basis. Again, to get away from subsidies going from the average taxpayer to the delinquent taxpayer.

Finally, we believe that the timely enactment is an important aspect of this legislation. That we do need this legislation to have a strong and effective debt collection program.

We are going forward with the major program, given the administrative opportunities we have. This legislation we believe is important and we believe the sooner it is enacted, the more likelihood that we can relieve this unnecessary $10 million a day burden imposed by delinquent taxpayers on the rest of America's responsible taxpayers.

Mr. Chairman, that concludes my opening statement.

I would be happy to respond to questions that you or other members of the committee might have.

Senator GRASSLEY. Thank you very much.

My first question relates to giving that many different Federal agencies that will be collecting delinquent Government debts. Will there be a standard procedure which every Federal agency will be required to follow before redisclosing a delinquent debtor IRS address to a collection agency or credit bureau?

Mr. HARPER. Well, we are right now working on the request for proposals. And I suspect we will wind up with a certain amount of boiler plate that will be applicable in all cases.

Of course, the debt collection technique for different agencies will vary. That, for example, when you are trying to collect a debt from a corporation that is one matter. When you are trying to collect a student loan that may be quite a different matter and a different approach is appropriate.

Senator GRASSLEY. Are you going to establish monitoring procedures in order to check Federal agencies on a random basis to determine if they are complying with the standard procedures or redisclosing IRS addresses to credit bureaus or collection agencies?

Mr. HARPER. Yes, we will be. Undoubtedly, our Inspector General Corp will play a key role in monitoring the implementation of this program.

Senator GRASSLEY. What type of monitoring procedures or follow-up procedures do you plan to make to ensure that collection agencies only use the IRS addresses for the specific purpose of collecting the government debt and not for the collection of delinquent debts or releasing them to creditors?

Mr. HARPER. I think the most important factor along those lines will be our audit procedures. Where, in fact, we will be auditing the contractors to make sure they are complying with their contractual obligations to the Federal Government which include non-disclosure. And of course the private contractor would be open to the types of penalties outlined by the IRS, both with respect to civil damages as well as I believe, the penalties are $5,000 fines and up to five years in prison for improper use of the information.

Senator GRASSLEY. If a delinquent government debtor has a complaint that a collection agency is using illegal tactics in an effort to collect a delinquent debt, who should he or she contact?

Mr. HARPER. Well, I think he has a number of potential persons that he can contact. Obviously, anyone at the agency involved or the Inspector General from that agency as the chief audit officer of the agency would be another individual he could contact.

Senator GRASSLEY. In addition is the Federal Government liable for the illegal practices of its agent?

That would be applicable if a credit bureau was a contracted agent of the Federal Government.

Mr. HARPER. I will ask Jerry Bridges to comment on that.

Mr. BRIDGES. Yes, a government contractor is treated under the Privacy Act. It is the same as an officer or employee of the U.S. Government and there are civil remedies within the Privacy Act.

Senator GRASSLEY. My last question deals with a statistic that you gave us on page 2 of your testimony.

It says "more than $25 billion were delinquent or in default."

Now, assuming that that is collectible if the proper administrative procedures are taken, either through Government employees or through contracting out. How much of that $25 billion would be net?

In other words, we are going to be paying so much to a collection agency for collecting. What might that percentage be, would you expect?

Mr. HARPER. I—do you want to wager a forecast on that?

Mr. BRIDGES. It is very difficult to say.

You have such a wide variety of debts within that $25 billion. Some would be more collectible than others. It is virtually impossible to arrive at an actual amount. Of the $25 billion, $13 billion are taxes.

The IRS has estimated about one-half or more of those would be collectible. The others are such a mixture it is very difficult to say.

Mr. HARPER. Right. And I would suspect that in negotiations with private contractors, we'll be paying variable rates, a percentage of what they collect, depending on the relative difficulty in collecting the particular loan.

Senator GRASSLEY. Well, then we would probably be lucky if we would realize half that, wouldn't we, when all is said and done?

Mr. HARPER. I would hesitate to forecast how much of that.

I think that our own internal forecasting is such that we believe that with this legislation we can collect a billion dollars a year that otherwise would not be collected next year or the year after, at least.

And that billion dollars, in the kind of budget situation we are in right now, we believe is critical.

Senator GRASSLEY. I—my comment would not—is not intended to divert attention from the importance of collecting whatever we can collect. In fact, there would probably be a good social goal to be accomplished to collect the money even if there wasn't any profit realized. Just to discourage future activity of people who figure that a way to get some money is from the Government.

Senator Baucus?

Senator BAUCUS. I understand that the Department of Education has a pilot program for collecting debts. Are you familiar with that?

Mr. HARPER. Yes, to some extent.

The Department of Education has run a pilot program with a couple of private sector debt collection agencies.

The experience there, we feel, has been very satisfactory and is a definite encouragement to proceed using private debt collectors in other agencies.

Senator BAUCUS. I understand the Department's internal efforts return about $3 for every dollar spent, whereas the private efforts return about $2 for every dollar spent.

Mr. HARPER. I am not sure about the figures but the important thing to realize is that the Department of Education would not have turned over any debt to a private collector unless it were a problem debt, unless it were hard to collect; unless it cost more to collect.

And thus, it should not be surprising that it is cheaper for the Department of Education to internally collect debts than it is for

the private sector in terms of resources it takes to collect a dollar of delinquent debts.

Senator BAUCUS. In addition to that, too, that debts were turned over to private agencies, I would guess that the private agencies would go after those that are more collectible than those that are not collectible, anyway.

Mr. HARPER. That is right. And again, I think the Department of Education can provide you the details. But as I understand it, there is a minimum number of procedures they must go through with every debt to make sure that they just don't do a second level of skimming the cream out of what is left after the first screening of the debts.

Senator BAUCUS. Is OMB going to do anything about contracting out private debt collection?

Mr. HARPER. Well, the personnel ceilings as they presently exist cover the agency's operations as of today.

I think that the Department of Education, for example, I am not sure exactly when, began to address this problem of collecting debts with student loans. And they hired a great number of temporary employees.

Secretary Bell came to the conclusion that he was better off and felt the Department was better off by moving to private contractors and letting these temporary employees go.

And obviously the Office of Management and Budget, with respect to personnel ceilings, is always conscious to changing programs in the departments and agencies.

If somebody made a good case that they needed to have some investment in their personnel ceiling, in a worthy cause such as this, we would certainly give it very careful consideration.

Senator BAUCUS. Thank you very much.

Mr. HARPER. Thank you, Senator.

Senator GRASSLEY. Thank you to Mr. Harper and your staff for your fine testimony that we will make use of during our deliberations on this legislation.

[The prepared statement of Edwin L. Harper follows:]

STATEMENT OF EDWIN L. HARPER, DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to be here today to discuss the Administration's efforts to improve debt collection in the Federal Government, and to comment on S.1249, the Debt Collection Act of 1981.

THE PROBLEM

I am sure that you are already aware of recent studies by the General Accounting Office and our own Debt Collection Project that reveal serious problems in Federal credit management and debt collection. Our analysis revealed $175 billion in debts owed the Government on September 30, 1979.

The $175 billion consisted of $165 billion of debt reported to the Treasury plus $10 billion of other debt uncovered by the Debt Collection Project.

Concerning the $175 billion, we found that:

More than $25 billion were delinquent or in default;

An additional $8.4 billion were in some form of rescheduled or stretch out status because of borrowers' inability to pay;

Over $1 billion in bad debts were written-off in fiscal year 1979 alone; and

Write-offs in future years are estimated to total over $6.3 billion.

The problems which have given rise to this enormous amount of overdue debt are extensive, and exist throughout the entire credit cycle—from the initial screening of

debtors to ultimate collection. One of the overriding problems is that the information systems that we have today cannot provide accurate and timely information on the amount of debt owed, the amount due, and the condition of the debt in terms of delinquencies and defaults. To arrive at the numbers I just cited, required a massive one time effort by OMB and the executive agencies.

The problems that we are trying to solve involve: (1) insufficient personnel and equipment resources allocated to deal with the debt workload; (2) a litigation process that impedes efficient enforcement of debt collection and (3) current Federal laws and regulations that inhibit the Government from taking advantage of collection tools commonly used in the private sector.

EXECUTIVE BRANCH ACTIONS

President Reagan has recognized the seriousness of this situation. On April 23, he directed Executive Branch departments and agencies to implement an aggressive debt collection program. The President stated: "Allowing uncollected debt to grow increases the cost of Government and adds to the inflation that hurts every one of us. We must make it clear that debts owed to the Federal Government must be repaid. . . . It is not right that responsible honest citizens should suffer because of those who do not honor their obligations or pay their taxes."

We are now working with the agencies to carry out the President's directive. Each agency has given us a preliminary action plan that describes each major debt collection problem in the agency, the specific steps to be taken to resolve the problem, and a timetable for each action item. We are now reviewing these plans. Once they are finalized, we will closely monitor agency progress in implementing improvements. I can assure you that this Administration is fully committed to improving the debt collection process in the agencies.

DEBT COLLECTION LEGISLATION

We are now certain that administrative actions alone will not solve the Government's debt collection problems.

Legislative actions are needed to make available essential tools and techniques commonly used in the private sector and to provide for increased efficiency and effectiveness in the way the Government goes about granting credit and servicing and collecting debt.

S. 1249 addresses these legislative needs and the Administration fully supports this bill. Mr. Chairman, we ask that you and the Subcommittee support these legislative remedies that will:

Allow referral of credit information on delinquent debtors to credit bureaus;

Require credit applicants to furnish their social security numbers for credit management purposes;

Provide for the offset of delinquent debts owed the Government by Federal employees against their salaries;

Make it a Federal offense to assault a Federal employee during the course of his official duties in collecting amounts due the Government;

Screen applicants seeking either Government direct or guaranteed credit with the Internal Revenue Service to assure that credit is not extended inadvertently to those who have failed to pay their taxes;

Allow agencies to redisclose delinquent debtor addresses obtained from the Internal Revenue Service to private sector contractors pursuing collection of debts;

Raise the interest rate on delinquent taxes due the Internal Revenue Service from 90 to 100 percent of the prime rate, with annual adjustments;

Provide that the six year statute of limitations does not prevent the administrative offset of delinquent debts owed the Government against future payments, benefits, or refunds due delinquent debtors;

Require the assessment of interest on non-tax debts due the Government at the Treausry's Tax and Loan Account Investment Rate, additional charges to provide for recovery of the costs incurred by the Government to collect delinquent debts, and, when appropriate, a penalty charge on debts that are more than 90 days past due;

Allow the courts more latitude in the use of special appointments to serve summonses in Federal debt cases when U.S. Marshals are not available for timely serving; and

Allow Federal agencies to contract for collection services in recovering debts owed the United States.

The sections of this bill that are the subject of the hearing today are a key part of the bill and are essential to our overall debt collection effort. I would like to briefly address each of them.

USE OF SOCIAL SECURITY NUMBERS

Section 4 of the bill would require the furnishing of social security numbers by individuals who are applying for credit or any other type of financial assistance which would result in an indebtedness to the United States Government.

The Privacy Act now prevents an agency from requiring an individual to include his social security number on the credit application. The exception is if a Federal statute or regulation enacted prior to the Privacy Act required the furnishing of the social security number by applicants.

Without the social security number, program agencies are restricted in their ability to verify the identity of credit applicants and to locate delinquent debtors. Agencies often have to resort to other more costly, less effective, and time consuming means to accomplish these essential debt management functions. Often, the social security number is the only means of verifying the identity of or locating debtors.

SCREENING POTENTIAL DEBTORS

Section 7 of the bill would require Federal agencies to screen credit applicants against Internal Revenue Service files of delinquent taxpayers. The purpose is to determine whether such applicants are indebted to the Government for unpaid taxes. The only information that the IRS would provide the program agency is on whether or not the credit applicant is delinquent on his tax payments. The amount of the tax liability, the nature of the liability, and other tax information would not be provided by the IRS to the agency.

The fundamental question is whether someone who is delinquent in his tax payments should be allowed to benefit from Federal credit programs. We believe that this question should be answered on its merits on a case-by-case basis. The provision in this bill does not require agencies to deny Federal credit to delinquent taxpayers, but it will ensure that agencies do not extend credit to delinquent taxpayers unknowingly.

This process will give the IRS support in collecting the more than $16 billion in overdue taxes.

USE OF IRS ADDRESSES TO LOCATE DELINQUENT DEBTORS

Section 7 would allow Federal agencies to redisclose the addresses of delinquent debtors obtained from the Internal Revenue Service to third parties who are performing debt collection services under contract.

Debtors often relocate without providing a forwarding address, and the agency's only source of an accurate address is the Internal Revenue Service. The Internal Revenue Code permits the disclosure of addresses to agencies for debt collection purposes, but does not allow agencies to redisclose the addresses to private sector contractors. Thus, agencies are now precluded from using the address for essential debt collection purposes. For example, agencies cannot use the address to obtain a credit report. Also, they are prevented from using the address when turning the account over to a collection agency for further recovery efforts. Therefore, agencies are faced with the situation of knowing where the debtor is located but are unable to share that knowledge with third parties who are engaged to perform collection services on behalf of the Government.

I would like to point out that the Department of Education already has statutory authority that allows it to redisclose IRS addresses to educational institutions or their collection agents for the purpose of collecting National Direct Student Loans. Approximately 439,000 such addresses were redisclosed in 1980, without adversely impacting our tax system.

DETERMINATION OF IRS RATE OF INTEREST

Section 8 would raise the rate of interest on delinquent taxes to 100 percent of the prime rate and provide for an annual adjustment to the rate. Current law establishes the rate at 90 percent of prime with a biennial adjustment. The current rate is 12 percent which is considerably lower than comparable private sector rates.

The current IRS rate is lower than that charged by the private sector to debtors for delinquencies on credit card transactions, installment payments, loan payments, and other credit transactions. As a result, individuals as well as businesses with cash flow problems often prefer to pay their private sector creditors first and IRS

later. They look upon taxes due the IRS as a good source for a comparatively cheap loan. We believe that this factor has contributed significantly to the rapid increase in tax delinquencies in recent years. An increased interest rate and more frequent adjustments will help reduce tax delinquencies. The GAO and the IRS in separate studies have recognized the need and recommend an increase in the interest rate.

TIMELY ENACTMENT

Mr. Chairman, these legislative remedies are essential to a strengthened Debt Collection Program for the Federal Government. We urge that the Congress give favorable consideration to their early enactment so that we may move quickly to reduce the amount of delinquent debt owed the Government. The interest alone on the $25 billion in delinquent debt is costing the taxpayers about $10 million a day.

Mr. Chairman, this concludes my prepared statement. I will be happy to answer any question you may have.

Senator GRASSLEY. It is now my pleasure to call to the witness table Wilbur D. Campbell, Acting Director of Accounting and Financial Management Division of the General Accounting Office.

Would you introduce your colleagues?

STATEMENT OF WILBUR D. CAMPBELL, ACTING DIRECTOR OF ACCOUNTING AND FINANCIAL MANAGEMENT DIVISION, GENERAL ACCOUNTING OFFICE

Mr. CAMPBELL. Thank you, Mr. Chairman.

On my left is Pete Coy, Acting Associate Director in our Claims Group. And on my right is Mr. Steinhoff, senior Group Director in our Systems in Operation Group.

With your permission I will submit my full statement for the record and briefly summarize the contents.

First let me say that we are here to support the purpose of this bill. As has previously been indicated by earlier witnesses, amounts due the Federal Government are staggering.

The portion of that amount that is delinquent is huge and rapidly rising. The GAO has taken a position in past years of a need for more aggressive action on the part of the Government in the debt collection area. And I think that the mood of the Congress as well as this administration today is one which perceives this as a means of reducing the budget and we are heartened by that.

If we are really serious about collecting these debts, I think there is an opportunity to recover vast sums, but it is not going to be free. It is going to cost money, and before the Government's debt collection problems can be remedied we believe that many actions, both administrative and legislative, must be taken.

In general, there are two basic reasons why debt collection in the Federal Government has not kept pace with the increasing number of debts.

First, debt collection has generally been afforded low priority with emphasis on disbursing funds rather than collecting them.

Second, present Government collection methods are expensive, slow, and ineffective when compared with commercial practices. Unless Federal agencies are provided with essential collection tools and resources and until they aggressively pursue the collection of debts, hundreds of millions of dollars will continue to be needlessly lost.

With respect to certain provisions of the bill, such as section 4 on the social security numbers, the screening in section 7(a), and the

interest rates, we are generally in concurrence and support those provisions.

With respect to the debtor identification problem, in section 7(b), which amends section 6103(m)(2) of the Internal Revenue Code, this section now authorizes Federal agencies to obtain debtor address information from the IRS but greatly limits an agency's use of that information since it cannot be redisclosed.

It appears to us that the language of Senate bill 1249 would permit disclosure for use by officers, employees, or agents of a Federal agency to locate the debtor for collection purposes, but it is not clear that this language would permit use of an address furnished by IRS for the purpose specifically authorized by section 3 of the bill—that of reporting delinquent debt information to commercial credit bureaus.

Further, lack of specific redisclosure authority may preclude use of the address for the purposes of further locator action or obtaining a credit report.

In our view, agencies should have access to the same collection alternatives, without regard to whether an address was furnished by IRS.

We strongly favor removal of these restrictions. We believe these restrictions prevent Federal agencies from fully carrying out their collection responsibilities and any possible invasion of taxpayer privacy which might result from the redisclosure of an IRS mailing address is minimal.

Consequently, we believe that addresses furnished to Federal agencies for debt collection purposes should lose their identity as tax return information.

We are providing suggested language for an amendment in an enclosure to this statement.

In addition to the items already in the bill, we would like to see it amended to include a provision for offset of delinquent debts against Federal tax refunds due to debtors.

Federal tax refunds are routinely made to many individuals who have not paid debts owed the Government. In March 1979, we reported to the Congress that of a sample of 613 terminated debts totaling $431,000, up to $153,000, or 36 percent, could have been collected over a 2-year period by reducing the debtors' tax refunds.

We recommended that, on a test basis, delinquent nontax receivables be collected by reducing future income tax refunds due to the debtors. Such offset would be made only after all other agency collection efforts fail and after procedures to protect the debtor's rights to due process had been instituted.

To protect the debtor's rights to due process the agency referring a debt for offset would be required to establish the debts validity, notify the debtor that the receivable was being transferred to IRS for collection, give the debtor an opportunity to request a hearing on the offset, and notify the debtor when the debt was collected by offset.

IRS expressed reservations about the desirability and practicality of such a program when balanced against the value of concentrating IRS resources and expertise on the administration of tax laws as well as the potential negative effect on the taxpayer withholding system.

A proposal in the fiscal 1980 IRS appropriatiors bill to fund 30 positions for such a test was not adopted.

Several Members of Congress, however, were interested in pursuing legislation on this point, and we have continued to develop related information.

In response to a request from Senator Sasser, as chairman of the Legislative Appropriations Subcommittee, we issued a report last July that pointed out that in 1979 alone, the State of Oregon was able to collect by offset from tax refunds over $2.4 million in delinquent debts that most likely would have been lost to the State.

The State spent only about $200,000 to collect this amount, while at the same time establishing strict controls to ensure that debtor's rights to due process are protected and that tax refunds are not arbitrarily offset.

In testimony before the Senate Governmental Affairs Committee on April 23, 1981, the director of Oregon's Department of Taxation reported that collections for 1980 were $3.7 million at a cost of less than $300,000. We understand that Oregon has experienced no adverse effect on its withholding system.

In supporting this type of offset we wish to emphasize that the necessary safeguards to protect debtors against arbitrary offset actions can and must be instituted, and the offset procedures should be thoroughly tested prior to full implementation.

We share the IRS concern that its expertise and resources for administering tax laws not be adversely affected; however, we do not believe these concerns override the need to provide Federal agencies with all essential tools and resources for the collection of growing volumes of delinquent debts.

Since the vast majority of citizens pay their debts to the Government, we believe they would be supportive of this offset program.

Essentially, we favor legislation requiring IRS to offset nontax debts on the basis of interagency agreements worked out between IRS and the Federal agencies wishing to refer debts for offset, with the Attorney General having a consultation role in the development of such agreements.

This would clearly mandate IRS to follow through with an offset program to the extent appropriate procedures could be worked out. The interagency agreement would provide a mechanism for resolving due process and other procedural issues.

We anticipate that the Attorney General could contribute to resolving differences should the referring agency and IRS be unable to agree on procedures. Finally, we believe that this legislative approach would lend itself to gradual implementation.

The Congress might express an intent that IRS work out an agreement with one agency and test that first, rather than attempting to work out a series of agreements at the outset.

Enclosure II to this statement provides suggested language for the amendment.

This concludes my statement, Mr. Chairman.

I will be happy to respond to any questions you may have.

Senator GRASSLEY. Well, thank you very much for your testimony.

And I remember the testimony of your organization, although I don't remember the individual who testified in support of offset.

Congressman Jeffords of Vermont worked out in considerable detail with your help, some language for accomplishing that goal, which obviously didn't culminate in successful legislation. But your efforts were appreciated by this Senator.

Is the language you are suggesting here and the procedure detailed here similar to what would have been used in that instance?

Mr. CAMPBELL. I'm not sure, Mr. Chairman.

I'm not familiar with the effort you are referring to, but I would assume the same principles would apply. I would have to check, to see if it is exactly the same.

Senator GRASSLEY. Maybe I ought to ask my staff—do you know what the administration's position was on offsets?

Are they kind of neutral on it, or do they oppose offsets?

Do you have any way of knowing in your exchange with the administration, whether or not they are leaning favorably toward offsets?

Mr. CAMPBELL. I don't think they have taken a position on it, but I may be—is that correct?

Mr. STEINHOFF. They did not include it in the bill.

Senator GRASSLEY. But according to staff on the Finance Committee, it is still under study.

That is all the questions I have, sir.

Thank you very much for you and your staff. I appreciate the opportunity for the presentation you make and the fine points you make on offset.

Mr. CAMPBELL. Thank you, sir.

[The prepared statement of Wilbur D. Campbell follows:]

STATEMENT OF WILBUR D. CAMPBELL, ACTING DIRECTOR, ACCOUNTING AND FINANCIAL MANAGEMENT DIVISION

Mr. Chairman and Members of the Subcommittee: We are here at your invitation to discuss the provisions of Senate bill 1249 that are being considered by your subcommittee. We support the purpose of this bill—to increase the efficiency of Government-wide efforts to collect debts owed the United States.

Debts arise from a host of Federal activities . . . from tax assessments to benefit and administrative overpayments, to overdue student and housing program loans. Most of these debts are paid routinely. However, some are not and amounts owed and being written off as uncollectable are substantial and growing rapidly.

Federal agencies recently reported that receivables from U.S. citizens and organizations exceeded $139 billion at the start of fiscal year 1981—a 36 percent increase in the last 2 years. As of September 30, 1979, Federal agencies reported that $24 billion due from U.S. citizens and organizations was delinquent, of which $13 billion represented delinquent taxes. For fiscal year 1979 agencies wrote off as uncollectable receivables totaling more than $1 billion. Gloomy as these statistics are they are probably understated. The accounting systems of many agencies do not provide accurate information on receivables, expected losses and writeoffs.

Before the Government's debt collection problems can be remedied, many actions—administrative and legislative—must be taken. In general, there are two basic reasons why debt collection in the Federal Government has not kept pace with the increasing number of debts. First, debt collection has generally been afforded low priority with emphasis on disbursing funds rather than collecting them. Second, present Government collection methods are expensive, slow, and ineffective when compared with commercial practices. Unless Federal agencies are provided with essential collection tools and resources and until they aggressively pursue the collection of debts, hundreds of millions of dollars will continue to be needlessly lost.

More effective collection efforts also should reduce the number of debts that become delinquent and uncollectable in future years. We have estimated that with a sustained high priority, high intensity effort, including the needed resources, legislative actions and administrative initiatives, as much as $6.7 billion in delinquent debt can be collected in future years that would not be collected if these actions do not occur.

At this time, I would like to comment on some specific issues which are addressed by the bill.

USE OF SOCIAL SECURITY NUMBERS

Section 4 of Senate bill 1249 would provide that applicants for Federal moneys which may result in an indebtedness to the Government must furnish their social security numbers. We know from our collection efforts and previous audits that not having a debtor's Social Security number often impedes efforts to positively identify and locate a debtor, thereby resulting in the termination of collection efforts. We fully support this provision.

SCREENING OF POTENTIAL DEBTORS

Section 7(a) of Senate bill 1249 would provide for IRS disclosure of certain outstanding tax liabilities of Federal loan applicants. We support the intent of this provision and are making no recommendations for language revision.

DEBTOR IDENTIFY INFORMATION

Section 7(b) of Senate bill 1249 would amend Section 6103(m)(2) of the Internal Revenue Code. Section 6103(m)(2) now authorizes Federal agencies to obtain debtor address information from the IRS but greatly limits an agency's use of that information since it cannot be redisclosed. It appears to us that the language of Senate bill 1249 would permit disclosure for use by officers, employees or agents of a Federal agency to locate the debtor for collection purposes, but it is not clear that this language would permit use of an address furnished by IRS for the purpose specifically authorized by section 3 of the bill—that of reporting delinquent debt information to commercial credit bureaus. Further, lack of specific redisclosure authority may preclude use of the address for the purposes of further locator action or obtaining a credit report. In our view, agencies should have access to the same collection alternatives, without regard to whether an address was furnished by IRS.

We strongly favor removal of these restrictions. We believe these restrictions prevent Federal agencies from fully carrying out their collection responsibilities and any possible invasion of taxpayer privacy which might result from the redisclosure of an IRS mailing address is minimal. Consequently, we believe that address furnished to Federal agencies for debt collection purposes should lose their identity as tax return information. Enclosure 1 to this statement provides suggested language for an amendment to this section.

DETERMINATION OF THE RATE OF INTEREST FOR IRS DEBTS

Section 8 of the bill would raise the rate of interest on delinquent taxes to 100 percent of the prime rate and provide for adjustment to the rate annually. Current law provides for a rate based on 90 percent of the prime rate and adjustment every 2 years.

In a report to the Congress in October 1980, we pointed out that the rate charged under current law is generally lower than the rate available in commercial money markets—thus discouraging prompt payment. We recommended that the rate be determined semiannually based on the Government's cost of financing and administering unpaid taxes.

Thus, we support this provision in Senate bill 1249 because it would substantially accomplish the intent of our earlier recommendation—that is, provide for use of a rate that is more closely tied to the commercial money market. We would also be willing to support a provision for more frequent adjustment of the rate, in line with our prior recommendation and with the provision in section 10 of the bill for more frequent adjustment of the rate on other types of debts.

OFFSET OF FEDERAL TAX REFUNDS

In addition to the items already in the bill, we would like to see it amended to include a provision for offset of delinquent debts against Federal tax refunds due to debtors.

Federal tax refunds are routinely made to many individuals who have not paid debts owed the Government. In March 1979, we reported to the Congress that of a sample of 613 terminated debts totaling $431,000, up to $153,000, or 36 percent, could have been collected over a 2-year period by reducing the debtors' tax refunds. We recommended that, on a test basis, delinquent nontax receivables be collected by reducing future income tax refunds due the debtors. Such offset would be made only after all other agency collection efforts fail and after procedures to protect the

debtor's rights to due process had been instituted. To protect the debtor's rights to due process the agency referring a debt for offset would be required to:

—establish the debts validity by giving the debtor ample opportunity to dispute the Government's claim,

—notify the debtor that the receivable was being transferred to IRS for collection,

—give the debtor an opportunity to request a hearing on the offset, and

—notify the debtor when the debt was collected by offset.

IRS expressed reservations about the desirability and practicality of such a program when balanced against the value of concentrating IRS resources and expertise on the administration of tax laws as well as the potential negative effect on the taxpayer withholding system. A proposal in the fiscal 1980 IRS appropriations bill to fund 30 positions for such a test was not adopted.

Several members of Congress, however, were interested in pursuing legislation on this point, and we have continued to develop related information. In response to a request from Senator Sasser, as Chairman of the Legislative Appropriations Subcommittee, we issued a report last July that pointed out that in 1979 alone, the State of Oregon was able to collect by offset from tax refunds over $2.4 million in delinquent debts that most likely would have been lost to the State. The State spent only about $200,000 to collect this amount, while at the same time establishing strict controls to ensure that debtor's rights to due process are protected and that tax refunds are not arbitrarily offset. In testimony before the Senate Governmental Affairs Committee on April 23, 1981, the Director of Oregon's Department of Taxation reported that collections for 1980 were $3.7 million at a cost of less than $300,000. We understand that Oregon has experienced no adverse effect on its withholding system.

In supporting this type of offset we wish to emphasize that the necessary safeguards to protect debtors against arbitrary offset actions can and must be instituted, and the offset procedures should be thoroughly tested prior to full implementation.

We share the IRS concern that its expertise and resources for administering tax laws not be adversely affected; however, we do not believe these concerns override the need to provide Federal agencies with all essential tools and resources for the collection of growing volumes of delinquent debts. Since the vast majority of citizens pay their debts to the Government, we believe they would be supportive of this offset program.

Essentially, we favor legislation requiring IRS to offset nontax debts on the basis of interagency agreements worked out between IRS and the Federal agencies wishing to refer debts for offset, with the Attorney General having a consultation role in the development of such agreements. This would clearly mandate IRS to follow through with an offset program to the extent appropriate procedures could be worked out. The interagency agreement would provide a mechanism for resolving due process and other procedural issues. We anticipate that the Attorney General could contribute to resolving differences should the referring agency and IRS be unable to agree on procedures. Finally, we believe that this legislative approach would lend itself to gradual implementation. The Congress might express an intent that IRS work out an agreement with one agency and test that first, rather than attempting to work out a series of agreements at the outset.

Enclosure II to this statement provides suggested language for the amendment.

In conclusion, there is great need to strengthen Federal collection programs. Some improvement can be achieved through increased attention to the problem, better management and additional collection resources, but we strongly believe that legislative action is needed to remove impediments to efficient and effective Federal collection efforts. Giving agency managers access to information that is available within the Federal sector and to the collection tool used by the private sector would enable them to greatly improve their performance.

The provisions of Senate bill 1249 that this subcommittee is considering, along with the changes that we are proposing, will significantly impact on the overall effectiveness of the bill. We urge the subcommittee's support of these legislative proposals.

This concludes my statement. We will be happy to respond to any questions that you or other members of the subcommittee may have.

ENCLOSURE I

ENCLOSURE I

PROPOSED AMENDMENT TO 26 U.S.C. § 6103(m)
TO PERMIT REDISCLOSURE OF MAILING ADDRESSES

Section 6103(m)(2) of the Internal Revenue Code of 1954, is amended to read as follows:

> "(2) Upon written request, the Secretary may disclose the mailing address of a taxpayer to officers and employees of an agency personally and directly enaged in carrying out collection activities relating to such taxpayer in accordance with the Federal Claims Collection Act of 1966 or other statutory authority. Any mailing address disclosed in accordance with the preceeding sentence shall no longer be considered 'return information' as defined in subsection (b)(2) of this section."

Section 6103(m) (2) of the Internal Revenue Code of 1954, is as amended (new language underlined; deleted language bracketed):

> "(2) Upon written request, the Secretary may disclose the mailing address of a taxpayer to officers and employees of an agency personally and directly engaged in [, and soley for their use in, preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding) pertaining to the] carrying out collection [or compromise of a Federal claim against such taxpayer] activities relating to such taxpayer in accordance with [the provisions of section (3) of] the Federal Claims Collection Act of 1966 or other statutory authority. Any mailing address disclosed in accordance with the preceeding sentence shall no longer be considered 'return information' as defined in subsection (b)(2) of this section."

ENCLOSURE II

ENCLOSURE II

PROPOSED AMENDMENT TO 26 U.S.C. § 6402 TO AUTHORIZE IRS TO OFFSET GENERAL GOVERNMENT DEBTS AGAINST INCOME TAX REFUNDS

Section 6402 of the Internal Revenue Code of 1954 is amended as follows:

(1) By amending section (a) to read:

"(a) GENERAL RULE. In the case of any overpayment, the Secretary or his delegate, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax or, in accordance with subsection (c), against any liability in respect of any other debt owed the Federal government, on the part of the person who made the overpayment and shall refund any balance to such person."

Subsection § 6402(a) as amended (new language underlined):

"(a) GENERAL RULE. In the case of any overpayment, the Secretary or his delegate, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax <u>or, in accordance with subsection (c), against any liability in respect of any other debt owed the Federal government,</u> on the part of the person who made the overpayment and shall refund any balance to such person."

(2) By adding the following new subsection (c):

"(c) OFFSET OF GENERAL GOVERNMENT DEBTS. The Secretary or his delegate shall, in consultation with the Attorney General, enter into an agreement with the head of an agency responsible for collection of the general Government debts referred to in subsection (a) establishing procedures for the referral and offset of such debts."

Senator GRASSLEY. It is now my pleasure to call to the witness table Mr. Nat Coluzzi; I hope I am pronouncing that right, Acting Branch Chief of Guaranteed Student Loans, Division of Program Operations, Department of Education, for testimony at this time.

Welcome to the IRS Oversight Subcommittee, and we appreciate your information.

STATEMENT OF NAT COLUZZI, ACTING BRANCH CHIEF OF GUARANTEED STUDENT LOANS, DIVISION OF PROGRAM OPERATIONS, DEPARTMENT OF EDUCATION

Mr. COLUZZI. Thank you, Mr. Chairman.

I have handed in the testimony already. I will summarize it briefly in the event you might have some questions.

The Department of Education has been in the collections business since 1958, starting with the national direct student loan program.

The large volume of delinquent loans started taking place in around 1977. There were backlogs of collections with a payment of claims under the federally insured student loan program. Also default rates and delinquencies were starting to build up under NDSL.

In 1977 we started an aggressive collections program. We hired over 1,000 full-time equivalent, temporary employees to reduce backlog of delinquent accounts.

The Department of Education then attacked the issue of developing its own operating systems for improving its collections services through the use of more experienced collection techniques. This included the development of its computer services, letter writing campaigns, telephone calls, and all the necessary support services.

We have gotten to the point now where we have caught up with the backlog. As a result we have released some of the temporary employees. We are now using, and have used as a backup, two private collection agencies.

The evaluation of these two agencies indicate that the collection agencies can do the job just as effectively I don't want to overemphasize that because one has to always address the specific portfolio which is being assigned to the collection agencies and how much work has been done before the assignments.

Although the percentage of the collections which have been cited in other testimony indicates that collections were made with less expense through the Department's efforts, it overlooks the fact that the accounts were first reviewed and collections attempted by the Department. After these accounts were worked very diligently by the Department, they were then assigned to private agencies.

There are some accounts which were perhaps not worked as completely as others. But, the overall majority of that portfolio had been worked by the Department before assignment to the private agencies.

Of the 100,000 accounts which were assigned through July 1980, one collection agency charged a flat 27 percent; the other charged a range of 32 to 44 percent based on the age of accounts which were being assigned.

These amounts shouldn't be used as future benchmarks other than the fact that they represent a benchmark of that portfolio at that time.

In the future accounts assigned to collection agencies will be evaluated on the basis of the work performed by the Department before the account is assigned to the private agency.

I believe the private sector will do its homework accordingly when bidding on our contracts.

We currently have two private agencies whose contracts are now winding down. We will not be giving them any further accounts. We are out on the streets with a new RFP.

This RFP was announced on May 4 in the Commerce Business Daily. Approximately 700 requests for the RFP have been made to the Department of Education.

The anticipated date of award was August 31. As of today, it looks like there will be a delay in that schedule.

While there has been interest shown by close to 700 agencies, considering that there are very few large national collection agencies, it doesn't mean that many will submit proposals. But, it is interesting to note the number that have requested the RFP.

Today we find we are going to have to delay the closing date. It has cost us $12,000 just to send the telegrams out to the 700 potential bidders, informing them of the new deadline.

We have also used credit bureaus in the past to the extent that we have requested credit bureau reports. We have yet to use credit bureaus as a reporting vehicle for debtors in the event they try to accept credit, or get extended credit through other sources. And the results would be, hopefully, that somewhere along the line someone extending credit will say, "Pay off the student loan first, and then come for new credit."

The mechanism for the credit bureau is written in the law and authorized. We, the Department of Education, are under the direction of the law in order to establish the use of credit bureaus.

But we are finding some difficulty in that it takes a turn in new directions. The normal process for the use of credit bureaus is to report total portfolios to credit bureaus.

In our case, we are limited to reporting only those persons that we have contacted and then attempted to collect from. Only then can we send their names to the credit bureau files.

This requires a new subsystem in our computer, and is therefore causing some delays in operation.

We appear to be the lead agency in this area, and we are having to help instruct the credit bureaus in how to coordinate their activities with ours.

We do expect that this will have an impact on future debt collection for all Federal agencies. The IRS files that we have used to locate debtors has been successful.

When you have a backlog of accounts where close to 68 percent of the addresses are incorrect, access to IRS files is invaluable.

Subsequent reviews of the IRS tapes show some reduction in success as you attempt in future years to pass the file for collection by others.

However, these success rates or failure rates shouldn't be looked upon desparingly because, you have to look at the portfolio with which you are dealing.

In the Department of Education we are dealing with student loans, a highly mobile population. It is much different from trying to locate someone who has purchased a house.

Our students are quite mobile.

The use of the IRS addresses has been very carefully monitored by us. We use an internal process. And while we have authority for the use of IRS addresses by private collection agencies, we should point out that the Department first attempts to verify the addresses through collection letters before transmitting addresses of respondents to collection agencies. At a certain point, that address belongs to the agency, after contacts have been made. The question would be: Is the IRS address a sole source information once you verify it from a second source or the individual debtor? Does it now become something other than an IRS address? And in our particular case, we have kept the address very, very carefully away from any other information that is involved in the collection.

That is my summation.

If there are any questions, I will be glad to answer them.

Senator GRASSLEY. OK, I want to announce for Senator Baucus that he has expressed to me a personal interest in the testimony that your Department is giving.

And he wants permission of the committee, which is automatic, to submit questions to you or your Department to be supplied for the record in writing.

So you can be expecting some questions from Senator Baucus.

First of all, I want to thank you for your testimony. Then ask three or four questions.

Do you have knowledge of any unauthorized use of IRS mailing addresses by collection agencies or Department employees?

Mr. COLUZZI. Department employees?

Senator GRASSLEY. Yes.

Mr. COLUZZI. Not to my knowledge, not Department employees.

Senator GRASSLEY. Do you have any figures which you can give this committee which would allow us to evaluate the success of your program?

Mr. COLUZZI. Yes, Senator, looking at the overall program or just the collection activities?

Senator GRASSLEY. I would want all your efforts to collect delinquent debts.

Mr. COLUZZI. We are collecting now on delinquent debts over $42 million per year.

It looks like we will collect over $45 million on the federally insured students loans, alone, this year.

Senator GRASSLEY. The question now is, compared to the $42 million figure you stated, how does that compare to what you were collecting before?

Mr. COLUZZI. Well, prior to the efforts in 1977, we were collecting somewhere around $4 or $5 million a year.

In fact, I believe, I have the figures right here.

Prior to 1977, we had collected $25 million since 1966 or thereabouts.

In the year 1977, we collected $9.6 million. Then we went from in 1977 to 9.6 and to 15.7 in 1978 in 1979 $42.1 million, in 1980, $42.7 million. And this year we will probably hit $45 million.

Senator GRASSLEY. In your testimony you said the percentage for these collection agencies is 27 percent in some instances and in other instances a range of 32 percent to 44 percent.

Now, you are suggesting that there will be 700 potential bidders. Would you expect that these percentages might be smaller as a result of having 700 potential bidders?

I assume that you have not had 700 potential bidders up to this point.

Mr. COLUZZI. There is not one submission yet. There are 700 people—or companies—that requested copies of the RFP. They will all wait until the last minute and rush them in.

Senator GRASSLEY. Can you answer my question then.

Would you expect that to be lower than that 27 percent which I assume is an average, and the 32 to 44 percent which would be the more difficult ones, I assume?

Mr. COLUZZI. I definitely do not want to quote a specific rate which might mislead those companies who are preparing their proposals now.

However, in this particular RFP, we have increased the number of steps that the contractor must take, resulting in some extra work load. So, therefore, there is extra work.

However, the portfolio is larger, which would have a tendency to drive the price down.

So, there are certain forces which will drive it up and here are some forces driving it down.

I will leave it to the private collection firm, to submit their bids.

However, I would make it clear that it doesn't necessarily mean that we will select the company that bids the lowest.

Senator GRASSLEY. The lowest most responsible I would assume.

Mr. COLUZZI. That is correct. Management and other techniques will require evaluations also.

Senator GRASSLEY. Now obviously you can use collection agencies without this legislation. This legislation isn't going to facilitate that, right?

Mr. COLUZZI. We already have the authority.

Senator GRASSLEY. But this legislation will facilitate collections by making valuable information available to you and in turn to your contractors.

I would assume that this would make it possible for bids—not only because they are more competitive but because information is easier to get.

Mr. COLUZZI. Yes, this legislation would make the information easier to obtain.

Senator GRASSLEY. Do you think that private collection agencies have more correct address information than the IRS has?

Mr. COLUZZI. Once a year the IRS gets address information from individuals. We are collecting every day of the year.

Consequently, throughout the year, additional activities are taking place. And sources of information become available through credit bureau reports and to the collection agencies through their customers, that may be much more current than the IRS address.

We always have to be careful when we finally get an IRS address to determine whether it is the latest information by looking at the file to see if we have a more current address.

Senator GRASSLEY. Well, then my question is answered other than I thought it would be. Which is the information we want.

In other words, the collection agencies are, to some extent, more sophisticated and have available information that the IRS does not have.

Mr. COLUZZI. Absolutely.

Senator GRASSLEY. One more question. Do you have any monitoring procedures in order to determine if a collection agency your Department deals with only use the IRS address in a limited fashion?

Let me say it again.

Do you have any monitoring procedures in order to determine if a collection agency your Department deals with complies with the limited use permitted them of IRS addresses?

Mr. COLUZZI. We have only let the two pilot projects.

In the pilot projects, if contractors were given an IRS address, it was only after the account had been worked by the Department.

That is the point I tried to make earlier.

The addresses we used in our collection effort, we get from IRS and then attempt to verify by collection letters.

Once verified they become our property. Those addresses may go to the contractor, not as an IRS address, but as a Department of Education address at that point.

So, we don't have experience specifically with the IRS. We have no knowledge of any violation of the IRS rule.

Senator GRASSLEY. Thank you very much for the testimony from you and for representing your Department so well.

Mr. COLUZZI. Thank you, Mr. Chairman.

[The prepared statement of Nazzerino Coluzzi follows:]

PREPARED STATEMENT OF NAZZERINO COLUZZI, CHIEF, GUARANTEED STUDENT LOAN BRANCH, DEPARTMENT OF EDUCATION, ON DEBT COLLECTION

Mr. Chairman and Members of the Subcommittee on the Oversight of the Internal Revenue Service, I am pleased to be here today to discuss with you the collection activities of the Department of Education (ED). In particular, my testimony today will focus on several activities we have been involved in to improve collections, including the use of private collection agencies, credit bureaus and the IRS Locator Service, under our two major student loan programs.

Under the Federal Insured Student Loan (FISL) program (a component of the Guaranteed Student Loan program), lenders submit claims to ED for reimbursement of federally insured loans as a result of death, disability, bankruptcy or default on the part of the student borrower. Once the claim has been approved, ED's Office of Student Financial Assistance (OSFA) is responsible for collecting on the defaulted accounts. Educational institutions are primarily responsible for collecting National Direct Student Loan (NDSL) program accounts, but, as a result of rising institutional NDSL default rates, ED has been given statutory authority to collect defaulted NDSL accounts forwarded to OSFA for additional collection activity. Over the years for FISL collections, and more recently for NDSL collections, OSFA has implemented many improvements to increase collections, which now total over $150 million for FISL and almost $6 million for NDSL.

One such improvement is the use of private collection agencies to supplement OSFA's efforts. Use of private agencies was authorized for the FISL program by the 1976 Education Amendments to the Higher Education Act. In January, 1979, contracts were awarded to two collection agencies to participate in a pilot project. Under the terms of the contracts, the agencies were to receive 100,000 FISL accounts through July 1, 1980. Many of these accounts had already been worked by OSFA. The commission charged under one contract is a flat 27 percent, and from

32-44 percent under the second contract, depending upon the age of the account. The contracts will expire (that is, all accounts must be returned by) December, 1982.

As of March, 1971, the two agencies had collected $4.6 million. A Department Task Force on Federal Versus Private Agency Collection of Student Loans concluded that private collection agencies are at least as cost-effective as the Department in collecting defaulted FISL accounts. A report on Student Loan Collections prepared by Booz, Allen and Hamilton, Inc. determined that the Federal versus contractor cost-effectiveness ratios are relatively close, even without taking into consideration the agencies' startup costs or the fact that the agencies received accounts already unsuccessfully worked internally. The Audit Agency of the Department of Health and Human Services has been engaged in a cost-effectiveness Study since early 1979 which attempts to adjust for the noncomparability of accounts through a statistical sampling of accounts. But the complexity of the task and the difficulty in obtaining data has continued to hinder completion of the Study.

All three reviews did determine that prior concern over possible violation of student privacy and the harassment of student defaulters is not an issue: there have been no serious problems in these areas with either of the agencies.

On balance, then, the pilot project is considered successful, and the Department intends to continue the use of collection agencies to supplement OSFA's collection activities for both FISL and NDSL accounts. A request for proposal has already been issued, and contracts are expected to be awarded by August 31, 1981. We expect that the new contractors will be in full operation before the end of 1981.

OFSA has already utilized credit bureaus in the past to locate defaulters and to obtain financial information to determine a defaulter's ability to repay his loan. We have also long supported the reporting of information on defaulters to credit bureaus. Authority to do so was obtained under the 1980 Education Amendments to the Higher Education Act.

But the necessary reporting mechanism is very complex, particularity given the size of our loan portfolio (approximately 740,000 FISL and NDSL open accounts as of September 20, 1980) and the restrictions on reporting and followup procedures contained in the Amendments and the Privacy Act of 1974. These restrictions which do not apply to commercial reporters to credit bureaus, include which defaulters must be reported and at what point in the collections cycle, and specific procedures and notice requirements. All of these must be built into the computer specifications being developed to allow interface with the credit bureau industry. Furthermore, the procurement process is unusual in that we must enter into cooperative agreements with the credit bureaus to which we report, rather than follow standard contracting procedures.

Despite these problems, however, we hope to report defaulters to credit bureaus soon, and expect that this action will have an impact on reducing defaults.

Our use of the IRS locator service dates back to March, 1978 when we first had the FISL default file matched against IRS tapes to obtain debtor addresses. This and subsequent matches have yielded positive results. In fact, we intend to match all potentially eligible accounts against the IRS files before they are referred to our new collection agencies. In the past, under Section 6103m(2) of the Internal Revenue Code, we have not released the IRS-supplied addresses to collection agencies (or any other entity outside ED) until the information had been independently verified by ED.

Verification was assumed when ED received the return receipt of certified return requested letters mailed to the addresses supplied by IRS, when thirty days had elapsed without having had a letter returned back to us as undeliverable, or when the defaulter had confirmed the address either by letter or by telephone. In the future, we will be able to release information to the collection agencies (as well as to lenders and Guarantee Agencies) without verifying it first under Section 6103m(4). We have also used the IRS Locator Service to assist institutions in locating NDSL defaulters. Institutions submit information on defaulters in either tape or hard-copy form to one of our contractors. A tape is prepared and forwarded to IRS for matching. Information is relayed back to OSFA which in turn informs the institutions of successful hits. (This direct referral of information to the institutions has always been possible under Section 6103m(4). In general, the NDSL-IRS matches have been very successful.

I would like to thank you for this opportunity to discuss these collection activities with you. I will be happy to answer any questions that you have.

Senator GRASSLEY. Next witness is Mr. John W. Hagan, Jr., Deputy Chief Benefits Director, Veterans' Administration.

Mr. Hagan? Thank you very much, and would you please introduce your colleagues from your Department.

STATEMENT OF JOHN W. HAGAN, JR., DEPUTY CHIEF BENEFITS DIRECTOR, VETERANS' ADMINISTRATION

Mr. HAGAN. Thank you, Mr. Chairman.

On my left is Mr. Al Kraut, the Director, Budget Service, Department of Veterans' Benefits.

On my right is Mr. Neil Lawson, Assistant General Counsel for the agency.

Mr. Chairman, my written testimony in the first two or three pages provides information to your committee and to you on what the Veterans' Administration has done in the way of attempting to collect accounts receivables.

We do recognize and know the seriousness of the problem in debt collection and overpayments.

I would like to go to page 3 of my testimony and speak specifically to the provisions of S. 1249.

We strongly support the debtor identity information portion of the bill, contained in subsection (b) of section 7.

Currently, section 6103(m) of the Internal Revenue Code of 1954, as amended, generally prohibits an agency from redisclosing taxpayer addresses received from the IRS.

The section does permit a Federal agency to obtain IRS addresses for use in debt collection efforts by personnel of the Federal agency. It is our understanding that S. 1249 would amend the existing code so that IRS addresses received by a Federal agency for debt collection purposes could be redisclosed by that Federal agency to agents, or contractors, for certain Federal debt collection efforts.

This provision would provide a valuable new debt collection authority to the Veterans' Administration.

The Veterans' Administration already utilizes IRS addresses for its direct debt collection efforts. In current cases, about 14 percent of our addresses are not accurate.

In older cases, the percent of error increases to 40 or more percent. We have found IRS addresses to be of assistance in about 81 percent of our bad address cases and they are relatively inexpensive to obtain.

In fiscal year 1980, we requested 130,000 addresses from IRS on accounts valued at $180 million. In many instances, having located veterans with these addresses, use of our standard administrative collection procedures resulted in a suitable resolution of the indebtedness.

In a significant number of cases in which we use IRS-supplied addresses, other action is necessary. In approximately 10 percent of the cases, the IRS-supplied addresses are not current.

For the VA to pursue these debt cases further, we need to be able to refer the IRS address to a contract consumer reporting agency to see if they have a valid current address. S. 1249 would amend the existing law to permit this.

In other cases, indications are that the IRS-supplied address is current, but the debtor ignores our demands for repayment.

In those cases, we will consider litigation by VA attorneys to recover the debt. Where the amount of the indebtedness is over

$1,200, we will forward such cases to the Department of Justice for collection litigation.

Pertinent claims collection regulations require that each such referral case include an assets and income report on the debtor.

The VA does not have the trained personnel necessary to go to a debtor's residence and make inquiries regarding assets for litigation purposes. Accordingly, we contract with a private firm for this service.

However, under current law we cannot refer those cases involving IRS addresses to our contractor because we cannot refer the IRS addresses outside the agency.

We have some 20,000 current cases, each involving a debt over $1,200 which we would like to refer to the Department of Justice for litigation; however, we cannot get asset and income reports on them because they are IRS address cases.

S. 1249 would correct this problem.

In our view, section 7(b) of S. 1249 would provide a significant additional debt collection authority to the VA and other Federal agencies.

This concludes my testimony, Mr. Chairman.

I will be pleased to answer any questions from you or other members of the subcommittee.

Senator GRASSLEY. I want to thank you for your testimony.

Can you explain to us why you feel a need to use private collection agencies?

Mr. HAGAN. Well, under the current procedure, after we have done all that we can do, we would like to know that we have another resource to use.

We do not have the people to go out and collect the debts. Nor do we have the information on where the people are employed. But we do know that in a number of instances, these collection agencies do have that information.

Senator GRASSLEY. How successful are your current debt collection efforts?

Mr. HAGAN. On debts that are recently established, we are very successful. I would not give you a percentage.

But I would check and submit it for the record, or do you have it, Al?

Mr. KRAUT. If we include offsets against current benefits, we are collecting at a rate between 80 and 85 percent.

Senator GRASSLEY. For those that aren't offset.

Do you have a high percentage of debts that can't be put against offsets?

Mr. HAGAN. Yes; about 15 to 20 percent.

Senator GRASSLEY. Well, no, that would be the other half of the—in other words, those that you can buy against offsets. Then you are saying you can get 100 percent of those.

But there are 15 to 20 percent of your debts that aren't applicable as offsets?

Mr. HAGAN. Yes.

Senator GRASSLEY. I guess what I was referring to, then, of that 15 to 20 percent, that can't be applied to offset. Do you know your collection rate on those?

Mr. KRAUT. I would say that perhaps 95 percent of the others are potentially collectible. The remaining 5 percent representing terminations and waivers.

Senator GRASSLEY. I think that answers the questions we have for you.

Thank you for your fine testimony.

[The prepared statement of John W. Hagan, Jr., follows:]

PREPARED STATEMENT OF JOHN W. HAGAN, JR., DEPUTY CHIEF BENEFITS DIRECTOR, VETERANS' ADMINISTRATION

Mr. Chairman and Members of the Subcommittee: I am pleased to appear this morning to provide you with our views on a portion of S. 1249.

However, before commenting specifically on this aspect of the proposed legislation, I would first like to provide you with a general overview of the VA's policy on debt collection and identify to you some of the activities we have undertaken to implement debt collection procedures within the agency.

As you know, Mr. Chairman, the President, the Administrator of Veterans Affairs, the Congress in general, and many others in and out of Government are seriously concerned with the collection of debts owed to the Federal Government. In particular, the VA is greatly concerned with collection or proper resolution of the sizable debt which has accumulated in conjunction with the operation of veterans benefits programs. The bulk of the debt has resulted from VA education benefit programs. These education debts arise from overpayments, or, to a much smaller extent in terms of dollar value, defaults on education loans.

As to the overall VA indebtedness, as of May 30, 1981, the VA maintained $648 million in active collection accounts at its Centralized Accounts Receivable System (CARS) in St. Paul, Minnesota. We have temporarily suspended active collection action on another $291 million in accounts which are recorded in our master record system at Hines, Illinois. More than 1.4 million individual cases of indebtedness to this agency are represented in these figures. We are actively pursuing collection in hundreds of thousands of these cases, including approximately 90,500 cases which have been referred to the Department of Justice for collection through litigation.

The VA has taken the initiative in several areas to expedite and facilitate debt collection. In this regard, the VA actively pursued passage of Public Law No. 96-466, which allows the VA to refer delinquent debtors to consumer reporting agencies in order to make a veteran's debt a part of the veteran's credit record. This law also authorizes the VA to charge interest for delinquent debts and for those which are being paid in installments. Administratively, we withhold home loan guarantees for persons with outstanding indebtedness. The result of this measure has been highly satisfactory. The VA has also been involved in utilizing Federal resources, such as computer matching programs, to improve our debt recoveries.

I would like to turn now to a specific provision of S. 1249 which is of interest to this subcommittee and to the Veterans Administration. We strongly support the Debtor Identity Information portion of the bill, contained at subsection (b) of Section 7. Currently, Section 6103(m) of the Internal Revenue Code of 1954, as amended, generally prohibits an agency from redisclosing taxpayer addresses received from the IRS. The section does permit a Federal agency to obtain IRS addresses for use in debt collection efforts by personnel of the Federal agency. It is our understanding that S. 1249 would amend the existing code so that IRS addresses received by a Federal agency for debt collection purposes could be redisclosed by that Federal agency to agents, or contractors, of that agency for certain Federal debt collection efforts. This provision would provide a valuable new debt collection authority to the Veterans Administration.

The Veterans Administration already utilizes IRS addresses for its direct debt collection efforts. In current VA cases, about 14 percent of our addresses are not accurate. In older VA cases, the percent of error increases to 40 or more percent. We have found IRS addresses to be of assistance in about 81 percent of our bad address cases and they are relatively inexpensive to obtain. In Fiscal Year 1980, we requested 130,000 addresses from IRS on accounts valued at $180 million. In many instances, having located veterans with these addresses, use of our standard administrative collection procedures has resulted in a suitable resolution of the indebtedness.

In a significant number of cases in which we use IRS-supplied addresses, other action is necessary. In approximately 10 percent of the cases, the IRS-supplied addresses are not current. For the VA to pursue these debt cases further, we need to be able to refer the IRS address to a contract consumer reporting agency to see if

they have a valid current address. S. 1249 would amend the existing law to permit this.

In other cases, indications are that the IRS-supplied address is current, but the debtor ignores our demands for repayment. In those cases, we will consider litigation by VA attorneys to recover the debt. Where the amount of the indebtedness is over $1,200, we will forward such cases to the Department of Justice for collection litigation. Pertinent claims collection regulations require that each such referral case include an assets and income report on the debtor. The VA does not have the trained personnel necessary to go to a debtor's residence and make inquiries regarding assets for litigation purposes. Accordingly, we contract with a private firm for this service. However, under current law we cannot refer those cases involving IRS addresses to our contractor because we cannot refer the IRS addresses outside the agency.

We have some 20,000 current cases, each involving a debt over $1,200 which we would like to refer to the Department of Justice for litigation; however, we cannot get asset and income reports on them because they are IRS address cases. S. 1249 would correct this problem.

In our view, section 7(b) of S. 1249 would provide a significant additional debt collection authority to the VA and other Federal agencies. This concludes my testimony, Mr. Chairman. I will be pleased to answer any questions from you or other members of the subcommittee.

Senator GRASSLEY. It is now my pleasure to call to the witness table Mr. John Spafford, president of the Associated Credit Bureaus, Inc., Houston, Tex.

Are you speaking just for yourself, sir, or are you speaking for your trade association as well?

STATEMENT OF JOHN SPAFFORD, PRESIDENT, ASSOCIATED CREDIT BUREAUS, INC., HOUSTON, TEX.

Mr. SPAFFORD. I am speaking for the trade association, Mr. Chairman.

Mr. Chairman and members of the Senate Subcommittee on Oversight of the Internal Revenue Service, my name is John L. Spafford and I am president of the Associated Credit Bureas, Inc. A national trade association, ACB represents some 1,800 credit bureaus which produce an estimated total of more than 125 million credit reports annually. In addition, 1,300 collection services hold membership in ACB.

Accompanying me today is D. Barry Connelly, senior vice president of the association.

Mr. Chairman, we are here today to testify on a very limited aspect of S. 1249, the Debt Collection Act of 1981. This is the fourth time we have presented testimony to the Congress from our vantage point on what we believe is progressive and important legislation.

Because previous testimony before the Senate Governmental Affairs Committee and the House Committee on Government Operations details the role of the credit bureau in the consumer credit marketplace, we will omit reference to that background information.

We commend Senator Percy and Senator Sasser for their diligent pursuit of this legislation. The members of our association have largely applauded the concept, that individuals who ignore and refuse to pay legitimate claims to the Government, should be subject to the same discipline of the marketplace as any other delinquent consumer debtor.

Nearly 3 years ago it was Senator William Proxmire, author of the Fair Credit Reporting Act who spoke of using the discipline of

the marketplace to collect debts due the Government, because it has been shown, that one of the strongest persuasions for debt repayment is the possibility of having one's credit record adversely affected.

Thus, over the course of the last two Congresses and, in fact, the last two administrations, there has been near unanimous, bipartisan agreement, that a citizen's refusal to pay a Government claim should be entered into that person's credit history to take whatever effect that fact might have on the individual's participation in the marketplace.

From the very beginning, our association, representing the credit reporting industry, has warned in congressional testimony, public statements and private meetings, that:

> If the government were truly concerned about collecting the billions of dollars it is owed by delinquent debtors, Congress would have to permit Government agencies to operate as creditors in the marketplace.

We cited examples of Government agency regulations which could defeat the purpose of the legislation, by demanding a relationship between the credit bureau and the Government agency which is not typical of the free marketplace.

The bottomline of our message—simply stated—is that if any Government agency wishes to engage the services of a credit bureau, we believe they should do so with no more and no less red tape and restrictions than any other lender who operates in the free market system.

In most cases, the congressional committees, GAO and OMB have accepted this approach as fair, reasonable and workable.

However, there is one aspect of S. 1249, as reported out of the Government Affairs Committee, which we warned about in our testimony before that committee on November 19, 1980, and which we believe may have the effect of defeating the purpose of the legislation.

We are referring to section 7 dealing with the disclosure of certain IRS information. We believe the legislation as drafted, or perhaps we should say as not drafted, leaves in place an IRS prohibition against disclosure of a consumer address to a credit bureau by a Government agency.

This has the net effect of eliminating the possibility of placing that consumer's delinquent status with the Government agency on his credit history at the credit bureau.

The same occurs when the IRS regulation would permit disclosure of the address to the credit bureau, but prohibits redisclosure by the credit bureau to another creditormaking legitimate inquiry to the credit bureau at a later date.

I believe a brief scenario will more clearly explain the self-defeating effect this situation has on this legislation.

First, we all stipulate that it is right, fair and effective for Government agencies to place relevant and accurate delinquent debtor information into a credit bureau file.

Second, it is largely accepted that most Government agencies have a poor history of keeping accurate records on the location of delinquent government debtors.

Third, we have been advised that Government agencies make frequent use of the IRS to inexpensively obtain relatively current

address information on hundreds of thousands of delinquent debtors each year.

Fourth, if a Government agency is going to place delinquent debtor information into the credit history of a consumer, the credit bureau must, as it requires with private sector lenders, require that the Government agency identify the consumer as thoroughly and accurately as possible.

The complete name is the primary identifier. The present or previous address is the secondary identifier. The social security number, employment, previous employment, wife's name all rank as tertiary identifiers.

Fifth, if a Government agency is simply going to obtain a current credit report on the delinquent debtor, the reasonable procedures standard in the Fair Credit Reporting Act requires as complete identification information as possible in order to assure reporting on the correct consumer.

An address is an indispensable part of that combination.

Sixth, the credit bureau his been accepted by the Congress in the Fair Credit Reporting Act as one which gathers and disseminates vital consumer information. This system only works in the private sector because there is a free and unrestricted, but legitimate flow of information between creditors through the credit bureau.

If a credit application submitted by retailer A has a new address on "Joe Consumer," retailer A is in no way contractually permitted to prohibit the subsequent release of that address to retailer B who may inquire for a legitimate purpose at a later date.

As we said on the first day that we ever discussed the possibility of the Government contributing information to the credit bureau or obtaining credit reports from the credit bureau, our contracts with the Government can not and will not permit the prohibition of reuse or redisclosure of information received from the Government.

We hasten to add, that the credit bureau could not care less where the Government address came from. If privacy is the issue, than don't tell us it came from the IRS.

Ironically, in many instances we suggest that the credit bureau probably already has the same address on the consumer in its files.

Thus, if this committee, this Congress or the IRS in all of its collective wisdom determines that the benefit gained by prohibiting Government agencies from revealing the address of a delinquent debtor to the credit bureau, outweighs the effective use of the consumer's credit history in the marketplace to collect tax dollars, then so be it.

However, we feel it our responsibility to advise you that you have effectively negated any relationship between the credit bureau and a Government agency where an IRS address has been obtained. The credit bureaus cannot and will not accept information from a Government agency or provide a credit report to a Government agency without a legitimate identifying address and without restriction.

It is critical we believe at this time to point out as we have in the past that beyond our responsibility to provide creditors with the most complete consumer credit histories and beyond our desire to work with the Government to insure fair and equitable collec-

tion of delinquent accounts, there is no obvious financial incentive accruing to credit reporting agencies who store this information.

Collection agency contracts with Government agencies are a wholly different matter.

From the credit bureau's point of view there is little to expect in the way of financial gain through increased purchasing of credit reports by Government agencies.

We only point this out, as a way of saying, that while we support this legislation, we do so without the strings attached. Whatever your decision to grant or refuse the disclosure of IRS address information, we wish to emphasize it will have little or no effect on our business, but it will have an effect on the effectiveness of the debt collection procedures of Government agencies.

In closing and in support of what we believe would be a reasonable position I should like to quote from the final paragraph of an editorial in the June 15, Wichita Kans., Eagle Beacon. The editorial headlined "Uncle Sam's Deadbeats" supports Senator Percy's legislation and calls it "long overdue."

In conclusion, it advises its readers and I quote,

> Much of what is being proposed falls within the realm of common sense. Unfortunately, it now appears necessary to legislate that into the Government's operations handbook.

Mr. Chairman, my colleague and I will be pleased to answer your questions.

Senator GRASSLEY. Thank you for the benefit of your testimony and also of your members. And I assume that your statement is a position arrived at either by your board of directors or by your membership in convention, right?

Mr. SPAFFORD. Yes, sir.

Senator GRASSLEY. Do you have any reason to believe that collection agencies or credit bureaus will use IRS mailing addresses in an unauthorized manner?

Mr. SPAFFORD. Well, the word "unauthorized" kind of complicates the question, Mr. Chairman.

There are two different sets of circumstances. In the case of a credit bureau, a credit bureau receiving an IRS address, must redisclose that or it is worthless to the credit bureau. It becomes a part of that consumer's credit history.

Without the ability to redisclose that to other legitimate inquirers for credit information is a useless piece of information. So, as I said in my testimony, it is very doubtful that any credit bureaus will accept that information with that restriction.

On the part of a collection agency, as I also said, and as one of your previous witnesses stated, in most cases the collection agency will already have had that current address. Or they will receive it from other sources.

And it becomes lost as an IRS address. And it is very natural when another creditor turns over an account, subsequently, for collection, that they will go through their file and use the most current address in the file, be it an IRS address or whatever address.

The impact of our testimony is that in order for the purpose of the legislation to be effective, both collection agencies and credit

bureaus must have the right to use that address as they do other addresses in the common marketplace.

Senator GRASSLEY. What would you do with the information on delinquent taxes that you would get from the IRS as part of a credit history?

Mr. SPAFFORD. We would add it to their credit history file, just like any other piece of delinquent information that might come from a legitimate credit grantor.

Senator GRASSLEY. What sort of safeguards would your association institute to be sure addresses aren't used for improper purposes?

Mr. SPAFFORD. Well, first of all, they are under the Fair Credit Reporting Act, which addresses this problem and our association does its best, working with the Federal Trade Commission and the Federal Reserve Board to make sure that our members comply with the Fair Credit Reporting Act and any other law which might affect their operation.

Second, we have codes of ethics, we have qualifications and requirements for membership which we watch very carefully.

Senator GRASSLEY. Would you consider these addresses private property once they are verified, as for instance, the Department of Education does?

Mr. SPAFFORD. Private property of who, sir?

Senator GRASSLEY. The private property of the collection—or credit bureau or collection agency.

Mr. SPAFFORD. It becomes a part of the credit history, and it becomes a part of the credit bureau's file.

Senator GRASSLEY. If your organizations are allowed to use IRS addresses, and release a debtor's responsibility to the public, who will be responsible for any incorrect information?

Mr. SPAFFORD. Senator, the Fair Credit Reporting Act already regulates that in the private sector, and it would be handled in the same way.

And to answer you, specifically, the consumer came to the credit bureau and I had a complete disclosure of her file, which is their right under the law. And if they challenge any of that information, we go back to the IRS or the Veterans Administration, or DOE or whoever it is, and we verify it. If it is wrong, it will be stricken. If there is a dispute, they can put in their part of the story.

So there is a procedure already established by Federal law.

Senator GRASSLEY. OK, go ahead, is there something more you want to say.

Mr. SPAFFORD. Mr. Chairman, as I said, we strongly support the intent of this legislation.

Our only purpose in being here today is to urge this committee and others who are dealing with this legislation not to impose upon credit reporting agencies and collection agencies any redtape that might inhibit the collection of the account on behalf of the Government or the use of that information on behalf of the consumer.

It is that possible redtape that we are concerned about.

Otherwise we support the legislation wholeheartedly.

Senator GRASSLEY. Thank you very much for your testimony.

[The prepared statement of John L. Spafford follows:]

PREPARED STATEMENT BY JOHN L. SPAFFORD, PRESIDENT OF ASSOCIATED CREDIT BUREAUS, INC.

Mr. Chairman and members of the Senate Subcommittee on Oversight of the Internal Revenue Service, my name is John L. Spafford and I am President of Associated Credit Bureaus, Inc. A national trade association, ACB represents some 1,800 credit bureaus which produce an estimated total of more than 125 million credit reports annually. In addition, 1,300 collection services hold membership in ACB.

Accompanying me today is D. Barry Connelly, Senior Vice President of the association.

Mr. Chairman, we are here today to testify on a very limited aspect of S. 1249, the "Debt Collection Act of 1981." This is the fourth time we have presented testimony to the Congress from our vantage point on what we believe is progressive and important legislation. Because previous testimony before the Senate Governmental Affairs Committee and the House Committee on Government Operations details the role of the credit bureau in the consumer credit marketplace, we will omit reference to that background information.

We commend Senator Percy and Senator Sasser for their diligent pursuit of this legislation. The members of our association have largely applauded the concept, that individuals who ignore and refuse to pay legitimate claims to the government, should be subject to the same discipline of the marketplace as any other delinquent consumer debtor. Nearly three years ago it was Senator William Proxmire, author of the Fair Credit Reporting Act who spoke of using the "discipline of the marketplace" to collect debts due the government, because it has been shown, that one of the strongest persuasions for debt repayment is the possibility of having one's credit record adversely affected.

Thus, over the course of the last two Congresses, and in fact the last two Administrations, there has been near unanimous, bi-partisan agreement, that a citizen's refusal to pay a government claim (debt) should be entered into that person's credit history to take whatever effect that fact might have on the individual's participation in the marketplace.

From the very beginning, our association, representing the credit reporting industry, has warned in Congressional testimony, public statements and private meetings that, "if the government were truly concerned about collecting the billions of dollars it is owed by delinquent debtors, Congress would have to permit government agencies to operate as creditors in the marketplace." We cited examples of government agency regulations which could defeat the purpose of the legislation, by demanding a relationship between the credit bureau and the government agency which is not typical of the free marketplace. The bottom line of our message—simply stated—is that if any government agency wishes to engage the services of a credit bureau, we believe they should do so with no more and no less red tape and restrictions than any other lender who operates in the free market system.

In most cases, the Congressional committees, GAO and OMB have accepted this approach as fair, reasonable and workable. However, there is one aspect of S. 1249, as reported out of the Government Affairs Committee, which we warned about in our testimony before that committee on November 19, 1980 and which we believe may have the effect of defeating the purpose of the legislation.

We are referring to Section 7 dealing with the disclosure of certain IRS return information. We believe the legislation as drafted, or perhaps we should say as not drafted, leaves in place an IRS prohibition against disclosure of a consumer address to a credit bureau by a government agency. This has the net effect of eliminating the possibility of placing that consumer's delinquent status with the government agency on his credit history at the credit bureau. The same occurs when the IRS regulation would permit disclosure of the address to the credit bureau, but prohibits re-disclosure by the credit bureau to another creditor making legitimate inquiry to the credit bureau at a later date.

I believe a brief scenario will more clearly explain the self-defeating effect this situation has on this legislation.

First, we all stipulate that it is right, fair and effective for government agencies to place relevant and accurate delinquent debtor information into a credit bureau file.

Second, it is largely accepted that most government agencies have a poor history of keeping accurate records on the location of delinquent government debtors.

Third, we have been advised that government agencies make frequent use of the IRS to inexpensively obtain relatively current address information on hundreds of thousands of delinquent debtors each year.

Fourth, if a government agency is going to place delinquent debtor information into the credit history of a consumer, the credit bureau must, as it requires with private sector lenders, require that the government agency identify the consumer as

thoroughly and accurately as possible. The complete name is the primary identifier. The present or previous address is the secondary identifier. The Social Security number, employment, previous employment, wife's name all rank as tertiary identifiers.

Fifth, if a government agency is simply going to obtain a current credit report on the delinquent debtor, the reasonable procedures standard in the Fair Credit Reporting Act requires as complete identification information as possible in order to assure reporting on the correct consumer. An address is an indispensable part of that combination.

Sixth, the credit bureau has been accepted by the Congress in the Fair Credit Reporting Act as one which gathers and disseminates vital consumer information. This system only works in the private sector because there is a free and unrestricted, but legitimate flow of information between creditors through the credit bureau. If a credit application submitted by Retailer A has a new address on "Joe Consumer," Retailer A is in no way contractually permitted to prohibit the subsequent release of that address to Retailer B who may inquire for a legitimate purpose at a later date.

As we said on the first day that we ever discussed the possibility of the government contributing information to the credit bureau or obtaining credit reports from the credit bureau, our contracts with the government cannot and will not permit the prohibition of reuse or redisclosure of information received from the government. We hasten to add, that the credit bureau could not care less where the governmei address came from. If privacy is the issue, then don't tell us it came from the IRS. Ironically, in many instances we suggest that the credit bureau probably already has the same address on the consumer in its files.

Thus, if this committee, this Congress or the IRS in all of its collective wisdom determines that the benefit gained by prohibiting government agencies from revealing the address of a delinquent debtor to the credit bureau, outweighs the effective use of the consumer's credit history in the marketplace to collect tax dollars, then so be it. However, we feel it our responsibility to advise you that you have effectively negated any relationship between the credit bureau and a government agency where an IRS address has been obtained. The credit bureaus cannot and will not accept information from a government agency or provide a credit report to a government agency without a legitimate identifying address and without restriction.

It is critical we believe at this time to point out as we have in the past that beyond our responsibility to provide creditors with the most complete consumer credit histories and beyond our desire to work with the government to insure fair and equitable collection of delinquent accounts, there is no obvious financial incentive accruing to credit reporting agencies who store this information. Collection agency contracts with government agencies are a wholly different matter. From the credit bureau's point of view there is little to expect in the way of financial gain through increased purchasing of credit reports by government agencies.

We only point this out, as a way of saying, that while we support this legislation, we do so without the strings attached. Whatever your decision to grant or refuse the disclosure of IRS address information, we wish to emphasize it will have little or no effect on our business, but it will have an effect on the effectiveness of the debt collection procedures of government agencies.

In closing and in support of what we believe would be a reasonable position I should like to quote from the final paragraph of an editorial in the June 15, Wichita Kansas Eagle Beacon. (Exhibit A) The editorial headlined "Uncle Sam's Deadbeats" supports Senator Percy's legislation and calls it "long overdue." In conclusion, it advises its readers and I quote, "Much of what is being proposed falls within the realm of common sense. Unfortunately, it now appears necessary to legislate that into the government's operations handbook."

Mr. Chairman, my colleague and I will be pleased to answer your questions.

EXHIBIT A

[From the Wichita Eagle Beacon, June 15, 1981]

UNCLE SAM'S DEADBEATS

In trying economic times such as these, with budget cuts and tax cuts both being proposed as part of the solution, it makes no sense for government to make little or no effort to collect outstanding debts.

That's why a proposal sponsored by Sen. Charles Percy, R-Ill., is a measure that, at least in principle, is long overdue. It would allow the federal government, with certain restrictions, to make use of some of the debt-collection practices now common in the private sector.

One thing Senate Bill 1249 would do is allow the government to turn certain of its bad debts over to private collection agencies. It is a bit humbling to think that the most powerful government in the world, operating on a budget measured in billions of dollars, is incapable of collecting money it legitimately is owed, and that prosaic debt collectors might have to be called in to get the job done.

But it is far better to resort to that sort of approach than to go on writing off the considerable sums involved as uncollectible. According to Sen. Percy, in his remakrs proposing the Debt Collection Act of 1981, "The federal government is the world's largest credit institution. It is now owed a staggering $175 billion. In fiscal year 1979 alone, over $25 billion, more than half of what was due to be repaid that year, was not collected."

He estimates his legislation could bring in up to $3.5 billion in welched loans within three years. That is not an inconsequential amount, when various budgets now being strained to the limit are considered.

The debt collection bill also would allow the government to make attachments on the paychecks of nearly 80,000 federal employees who have defaulted on obligations to the government. It almost certainly would improve the pay-back record on student loans, 81 percent of which currently are ignored by those who have financed their education with them.

Much of what is being proposed falls within the realm of common sense. Unfortunately, it now appears necessary to legislate that into the government's operations handbook.

Senator GRASSLEY. I now call to the witness table Mr. David Keating, director of legislative policy, National Taxpayers Union.

Is Mr. Keating here?

OK, then I would call then Mr. John Shattuck, legislative director of the American Civil Liberties Union.

STATEMENT OF MR. JOHN SHATTUCK, LEGISLATIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION

Mr. SHATTUCK. Thank you very much, Mr. Chairman.

It is a privilege to appear here on a subject of substantial importance to my organization.

I should say at the outset that I represent some 200,000 members of the American Civil Liberties Union and I appear here on their behalf, not just in my personal capacity.

I am the legislative director of the organization and I have been involved for a number of years in privacy issues.

I am also the author of a textbook "Rights and Privacy," which was published in 1977.

I have a relatively lengthy statement which I will summarize and submit the entire statement for the record.

Over the last decade, the ACLU has actively promoted efforts to preserve and enhance the privacy rights of those who are subject to personal records maintained both by private industry and by Government.

I have already testified, as you noted, Mr. Chairman, at length on this bill, before the Senate Governmental Affairs Committee, and I am submitting a copy of that testimony for the record.

Many of the questions I raised then about the impact of S. 1249 on individual privacy have been resolved by committee amendment to the original bill. Let me just review a number of those.

The bill now specifies and substantially narrows the information to be disclosed to credit reporting companies by Federal agencies.

It requires agency heads to review and verify that a claim is owed and make reasonable efforts to locate an individual without an address before releasing any information.

The committee also limited the information that may be disclosed by the IRS to other agencies to the fact of the existence of any undisputed outstanding tax liability of a person applying for a Federal loan.

Finally, the Governmental Affairs Committee established certain procedural safeguards for salary offsets of Government employees. And we commend the committee and Senator Percy for his leadership efforts there, to bring the proposed expedited procedure for Federal debt collection into conformity with the protection of personal privacy interests.

I should say, however, Mr. Chairman——

Senator GRASSLEY. Let me interrupt you, at this point, because I had in mind to ask you in regard to what you said about the existence of any undisputed outstanding tax liability.

Is that as opposed to the amount of it?

Did that bother the ACLU that the exact amount of the tax liability would be stated?

Mr. SHATTUCK. Mr. Chairman, I will go into one of our concerns in a little greater length with respect to some other IRS information.

But, one of our concerns was that the procedures of this bill not be permitted to invade generally, the confidentiality of information in the IRS.

As the bill was originally introduced, it appeared to permit certain return information—information actually from the income tax return—to be disclosed in connection with determining whether someone had an outstanding tax liability.

The fact of the liability itself is now all that can be disclosed under the procedures adopted by the Governmental Affairs Committee.

We didn't take a position in the Governmental Affairs Committee as to whether or not the fact or the actual amount should be the information to be disclosed.

But we strongly opposed the disclosure of anything more than——

Senator GRASSLEY. And so, it was your feeling, that the original language would allow a multitude of information?

Mr. SHATTUCK. It was written quite broadly——

Senator GRASSLEY. Not just the amount, and the amount in and of itself doesn't bother you as much as the possibility that any information on the tax return would be available without the proper safeguards in the legislation.

Mr. SHATTUCK. Right.

Any return information, Mr. Chairman, we——

Senator GRASSLEY. So this is nailed down just to the fact that there is an undisputed tax liability?

Mr. SHATTUCK. That is right, although we do have some question about how a liability will be determined to be no longer in dispute, but I will get to that in just a moment.

We do share with Senator Baucus a number of serious concerns about the bill as it stands. We think perhaps the most important one is the fact that it circumvents the Federal Privacy Act with respect to personal information disclosed by Federal agencies to private credit reporting companies.

We have discussed that issue at length before the Senate Governmental Affairs Committee.

I understand that that particular issue is beyond the jurisdiction of the Senate Finance Committee. It is extremely important to us, so I will simply refer you to our statement on that point, and the fact that I don't go into it in greater length doesn't mean that it isn't important.

But an issue that is before the Senate Finance Committee that remains in the bill is the requirement that individuals provide social security numbers on any application for credit, financial assistance, or other Government payment.

This provision has no counterpart in the House bill, which has already passed, and passed I might add, overwhelmingly, on this subject.

It was passed on the suspension calendar over there, and is considerably narrower than the Senate bill. It doesn't contain a social security number requirement.

We have long taken the position, Mr. Chairman, that any new mandated use of the social security number threatens the privacy of all American citizens.

We agree on this point with numerous Government studies and commission reports, including the 1973 report of President Nixon's HEW Advisory Committee on Automated Personal Data Systems, and the 1977 report of the Privacy Protections Study Commission which was created during the Ford administration.

Of course the social security number is already informally used for a variety of identification purposes. But each additional mandated use, when the Congress says we want the number to be used for such and such a purpose, is further incentive for turning the number into what has widely been regarded by the Commissions that I cited as a universal identifier, which would provide the key to access to a nationwide data bank containing a wide range of personal information, with all the Big Brother connotations that accompany that notion.

Because there are already so many informal uses of the social security number, and pooling of records is so common, each new mandated use should be considered very carefully, weighing its value against the dangers rising to our civil liberties.

In this case, we believe the advantages for identification are less than the inherent threat to the privacy of all American citizens. We don't think the case has been made for the use of social security numbers in the way mandated by this bill.

A further concern that we have—a third issue in the bill—involves the disclosure of taxpayer mailing addresses by the IRS. And it is closely related to the social security number concern that I just raised.

S. 1249 allows the Internal Revenue Service to disclose to Federal agencies mailing addresses of individuals which may in turn be redisclosed to consumer reporting agencies in accordance with other provisions in the bill.

Such a provision puts the IRS machinery to a use for which it was not created, thereby diverting resources from its sole intended mission—the collection of taxes.

In so doing, the disclosure of addresses undermines the strict confidentiality in which taxpayers must have faith. Efficient tax collection depends on the public perception that all information furnished by the IRS will be kept confidential so that voluntary disclosure of data by taxpayers will be frank and complete.

Once the doors to the vast personal within the IRS are opened, Mr. Chairman, even if only a crack, we are concerned that taxpayers' fears for their privacy will begin to overcome their duty to reveal essential details of their lives for the purpose of tax payment.

The statutory authority of IRS to obtain information must not be viewed as creating some form of governmental asset which may then be transferred to other arms of the Government pursuing legitimate Government objectives like debt collection.

The information gained by the IRS does not in any sense belong to the Government-at-large. Rather, it is held in special trust by the IRS for its unique, important purpose of collecting taxes.

Indeed, it is only the unique nature of the IRS function that justifies the extraordinary degree of intrusion that the IRS is allowed to make into the lives of individuals. Dissemination of IRS information to other Government agencies for nontax purposes is a violation of the IRS special trust.

I would like to make note, at this point Mr. Chairman, that last year Senator Jepsen was extremely eloquent on this issue on the floor of the Senate, when he led the opposition—or participated in leading the opposition to efforts to repeal portions of the Tax Reform Act which protect the confidentiality of IRS information and prohibit its use for nontax purposes, an issue which I think is going to be before the Senate very soon again, if not today.

That issue is very closely related to the one in this bill.

In sum, Mr. Chairman, we believe that the address disclosure by the IRS threatens the original mission of that agency as well as the privacy of taxpayers.

Those are the two principle concerns that we have with the bill as it stands now. I mentioned also the concern with respect to determining when there is an outstanding liability of a taxpayer for the purposes of disclosure of the fact that a person is liable.

I think that it would be possible to clarify the bill so that no disputed liability would be disclosed. If one is in a dispute with the Government as to whether or not you are liable for back taxes, the fact that there are back taxes owed should not be disclosed. How that determination is made, I think, has not yet been clarified in the bill.

Otherwise, Mr. Chairman, we think the bill has improved but it does continue to have these two major concerns with respect to the privacy of all Americans.

Thank you very much.

Senator GRASSLEY. Can I ask you, just from a philosophical point of view, does the mere existence of legislation like this, not going into the details of it which you have done very well, does just the thrust of the legislation bother you and/or your organization?

Mr. SHATTUCK. Well, we recognize the legitimacy of the Government's need to collect its debts. Anybody who is a creditor is entitled to collect those debts.

We also recognize the need to expedite procedures to insure that the Government is able to collect its debts. So in that respect we don't find the legislation obnoxious, in principle.

But we do think that the Senate is always engaged in efforts to balance various interests that are at stake here. And we are concerned that the proper balance be struck between the privacy protection and the collection of Government debts.

We think it is close to being struck, but it has not yet been struck in this bill.

Senator GRASSLEY. If Federal agencies are not allowed to obtain the social security number of personal loan applicants, what other means are available to identify a Federal loan applicant after the loan becomes delinquent?

Mr. SHATTUCK. Well, I think the fact that a Federal loan applicant is required to state the address at the time that the application is filed and perhaps even to incur liabilities if the wrong address is provided, and to continue to stay in touch with the lending agency under the same possible liabilities for failure to stay in touch should be sufficient.

We do not think that anybody ought to be treated lightly when they are going to a Federal agency and saying, "Here, give me a loan."

You are not entitled to a handout, you are not entitled to refuse to disclose the kind of information that must be disclosed at that point.

We are concerned in the social security number area about the principle of extending further and further the uses of the social security number for purposes other than that for which that number was originally created, which was the administration of the social security system.

But, we do think that to require people to swear that their address is accurate and to require them to continue to stay in touch with the agency during the time that their loan is outstanding is a perfectly legitimate one, and that law ought to be enforced. And if there is an effort to circumvent it, then the person would be subject to penalties.

Senator GRASSLEY. Why would you deny the use of social security numbers to the Federal Government as a creditor while all banks and other lending institutions can make use of social security numbers from individuals who want to borrow?

Mr. SHATTUCK. Well, I should say at this point, Mr. Chairman, that we were concerned at the time the social security number requirement in the Bank Secrecy Act was extended to banks.

The requirement that social security numbers be disclosed at that point, we think, created many of the same concerns that we have today.

So I am repeating a concern which we have raised previously. That concern is in no way different than it was when the Bank Secrecy Act legislation was originally passed.

Senator GRASSLEY. I thank you, Mr. Shattuck, for your testimony.

I appreciate it very much, and your points of view will be taken into consideration by the Senate Finance Committee as we deliberate on this legislation.

That is the end of our witness list at this point, so I adjourn this meeting.

Thank you all very much.

[The prepared statement of John Shattuck follows:]

TESTIMONY OF JOHN SHATTUCK, LEGISLATIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION

The American Civil Liberties Union is a nationwide, nonpartisan organization devoted to the protection of the Bill of Rights. Over recent years, the ACLU has actively promoted efforts to preserve and enhance the privacy rights of those who are the subjects of personal records maintained by private industry and government.

I appreciate this opportunity to comment on S. 1249, which would allow federal agencies to disclose private records to consumer reporting agencies of persons alleged to be in debt to the federal government. While the objective of the proposed legislation—to facilitate collection of debts owed to the federal government—is certainly legitimate, that objective need not, and should not, be accomplished at the cost of undermining existing privacy rights protected by federal statute. Personal records maintained by government agencies are now covered by the federal Privacy Act, 5 U.S.C. Section 552a, which protects the privacy of federal record-subjects and imposes corresponding obligations on government recordkeepers.

The House of Representatives has already passed a version of this proposal, H.R. 2811, which would accomplish the debt collection objectives, but in ways that are comparatively less intrusive on the privacy rights of the subjects of the released records. I will first address the general objections of the ACLU to the approach of either version, both of which assume the necessity of diluting privacy protections to achieve their goals.

Both H.R. 2811 and S. 1249 would authorize the transfer of records to private consumer reporting agencies, the theory being that if debtors' credit ratings are affected by non-payment of federal loans, there will be incentive to meet their obligations. Since the Privacy Act applies to records maintained by government contractors, it would continue to apply to records transferred to consumer reporting agencies, were it not for a provision in the bill which repeals the Privacy Act for this category of contractors.[1]

This provision virtually amounts to a "windfall profit" for the consumer reporting industry. The industry is given free access to additional "raw material"—credit information—that it can then use to further its own business interests of rating people's credit standing. Under S. 1249, credit reporting companies are not obligated to pay anything for this information, but only to do what they are in business to do anyway. The only "cost" of this arrangement is extinguishment of the existing privacy rights of federal record subjects.

THE PRIVACY ACT AND GOVERNMENT CONTRACTORS

Unless the Privacy Act is uniformly applied to government contractors, federal agencies will be able to avoid their responsibilities under this important law and frustrate its purpose. In its 1977 Final Report, the Privacy Protection Study Commission, established by Congress, stressed that ". . . the Federal government must assure that the basic protections of the Privacy Act apply to records generated with Federal funds for use by the Federal government." [2] In fact, the Commission recommended that the scope of the Privacy Act be expanded so as to apply to records maintained by government grantees as well as contractors. In any event, if Congress is to allow the agencies to contract with private consumer reporting companies, both the letter and the spirit of the Privacy Act require that it continue to apply to these records.

Considerable attention over the past ten years has been focused on the impact on personal privacy of the practises of the credit reporting industry.[3] The capacity of credit bureaus to collect, store and disseminate personal information has grown rapidly with the growth in demand for consumer credit and advances in computer technology. While these developments have made it possible for credit agencies to

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[1] Section 2(c)(2) of S. 1249 provides that "[a] consumer reporting agency to which a record is disclosed . . . shall not be considered a contractor for the purposes of this section."

[2] "Personal Privacy in an Information Society," The Report of the Privacy Protection Study Commission, p. 505, 1977 (hereafter Privacy Commission).

[3] See, e.g., Hearings before the Subcommittee on Consumer Credit of the Senate Committee on Banking, Housing and Urban Affairs on S. 2360 to Amend the Fair Credit Reporting Act (93d Congress, 1973) and on S. 1840 to Amend the Fair Credit Reporting Act (94th Congress, 1975).

serve their subscribers more efficiently, they have also increased the risk of error or invasion of privacy that an individual must incur in order to enjoy the advantages of consumer credit.

The harm that may befall an individual when inaccurate, incomplete, or irrelevant information is disseminated in a credit report can be substantial. This is a result of the highly personal nature of the information incorporated into credit reports as well as the great number of important decisions which are made on the basis of this information.

The negative impact of inaccurate or irrelevant information in a report is compounded by the practice of selling reports to just about anyone willing to pay the price. Credit bureaus possess substantial "gatekeeping" powers with the information they control affecting not only the credit relationship, but also the relationship an individual has with insurers, employers, landlords, and many others who decide whether to grant or deny a benefit on the basis of information contained in credit reports. Thus, an erroneous report can adversely affect many aspects of an individual's life.

Under S. 1249, records disclosed by government agencies to credit reporting companies would no longer be protected by the Privacy Act, and would be covered only by the Fair Credit Reporting Act (FCRA). Record-subjects would thus lose a variety of important privacy rights.

a. Right of Access

In light of the dangers posed by the existence and dissemination of inaccurate personal information, basic principles of fairness require that record-subjects be granted the right to inspect and copy their records. While the Privacy Act provides for direct access, the FCRA does not. Instead, the record subject has only a limited right to know the "nature and substance" of the information in a consumer reporting agency file, as described by an agency employee.

The direct access provision of the Privacy Act is far more likely to instill confidence in the system, and provides the record subject with the information necessary to challenge the relevance or accuracy of information in the record. It also creates an incentive for agencies to insist upon trustworthy sources, since inaccurate or misleading information will more readily be discovered and challenged. Under S. 1249 this right of access would be extinguished 60 days after a federal agency attempts to notify a record-subject of its intention to disclose the record to a consumer reporting agency.

b. Right of Correction

The Privacy Act establishes effective safeguards to insure the accuracy of record information. A record-subject may request correction or amendment of information which he or she believes is not accurate, relevant, timely or complete. Under the FCRA on the other hand, an individual may not question the relevance of information but only its completeness or accuracy.

The Privacy Act permits an individual who has been denied a correction or amendment of a record to appeal the denial, and if the appeal is unsuccessful, to seek judicial review. No such rights are provided a record-subject under the FCRA or S. 1249, once a federal record has been disclosed to a consumer reporting agency. Both statutes allow a record-subject to file a dispute statement with the recordkeeper, but only the Privacy Act places the agency under a duty to transmit a copy of the statement whenever the disputed information is subsequently disclosed. Finally, under the FCRA, an agency need not even investigate a dispute raised by a record-subject whenever "it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant." The consumer reporting agency is free to determine which disputes are irrelevant or frivolous.

In sum, once a federal record has been disseminated to a consumer reporting agency, both S. 1249 and the FCRA deny a record-subject both the information needed to know of inaccuracies, and the procedural rights needed to assure that any inaccuracies which are discovered are expunged from the record.

c. Scope of Permissible Disclosures

The Privacy Act allows a recordkeeper to disclose information without the record-subject's authorization only under carefully defined circumstances. Both S. 1249 and the FCRA, on the other hand, dangerously expand the range of permissible disclosures. A consumer reporting agency would be permitted to furnish a credit report to any person who it "has reason to believe has a legitimate business need for the information in connection with a business transaction involving the consumer." [4] Obviously, a consumer reporting agency will be inclined to define "legitimacy"

[4] 15 U.S.C. § 1681b(3)(E).

broadly in order to sell more reports. Credit bureaus have generally been quite willing to share reports with a broad range of parties having no credit relationship with the record-subject. Generally, the record-subject is completely unaware of such disclosures, which are regularly made to collection agencies, inspection bureaus, insurance companies, employers, landlords, and law enforcement agencies.

These are only some of the important differences between the Privacy Act and the FCRA. They clearly demonstrate that a person who is the subject of records covered by the Privacy Act has far more privacy than one who is the subject of a record covered only by S. 1249 and the FCRA.

I would now like to highlight our specific comments on S. 1249, which contains some provisions that more seriously threaten the privacy rights of record-subjects than does H.R. 2811.

LIMITS ON INFORMATION TO BE DISCLOSED

S. 1249 contains no specific restrictions on what sort of information may be released by government agencies to consumer reporting agencies. Section 3(1)(A) merely provides that any federal agency may "notify a consumer reporting agency" that a person is responsible for a claim. Government files may contain a wide variety of personal information, unrelated to a person's debt status, and release of such information to consumer reporting agencies would only invade a person's privacy. This situation is especially troublesome when such information, once released to credit reporting agencies, is subject to the weaker protection of the Fair Credit Reporting Act, as I discussed above. The House bill narrows this loophole, by explicitly limiting the information which may be disclosed to:

1. the name, address, and other information necessary to establish the identity of the debtor;
2. the amount, status, and history of the claim; and
3. the agency or program under which the claim arose.

This provision expressly preserves the privacy of most personal information in government files, to the extent that such data is not clearly necessary for the specific purpose of debt collection.

DISCLOSURE OF TAX INFORMATION

Another objectionable provision of S. 1249, not contained in H.R. 2811, amends the Internal Revenue Code to allow the Internal Revenue Service to release tax return information to federal lending agencies. This measure would seriously erode the existing statutory protection of the privacy of federal taxpayers.

IRS is given broad powers to gather a wide range of detailed, highly personal data, in order to carry out its duty of collection of taxes. In return for this freedom from constraints, Congress wisely provided in the Tax Reform Act of 1976 that the IRS conform to stringent requirements of confidentiality. Although the purpose of a tax information disclosure under S. 1249 is limited to determining the tax liability of federal loan applicants, there is no specific limit on what return information may be disclosed. Under Section 7, "return information relating to the amount, if any, of any outstanding liability of a Federal loan application for any tax" could include a wide variety of information other than the amount of tax liability itself.

A person's tax returns, and the records of his or her financial transactions with a bank or another private entity, are a reflection of that person's life. Those records mirror, often in great detail, personal habits and associations. The beginning of a tax return gives name, address, social security number, identity and dependents and the taxpayer's gross income. Various schedules may indicate political and religious affiliations and activities, medical or psychiatric treatment, union membership, creditors, investments and holdings. Additional documents compiled by the taxpayer and pertaining to statements made on a tax return, but not filed with the return contain a similar wealth of sensitive personal information. In 1975, then IRS Commissioner Donald Alexander noted that the IRS has "a gold mine of information about more people than any other agency in this country." [5]

The IRS has been given enormous, unparalleled coercive power to obtain information from individuals concerning every aspect of their private lives. Without a subpoena or a warrant or any showing of probable cause, the IRS can require an individual to divulge intimate personal information. Because of the clear threat such broad powers hold to an individual's constitutional rights to be free from government coercion, the Supreme Court has carved a narrow "required records" exception to the Fifth Amendment, principally for the benefit of IRS. See *United*

[5] Committee Print, Confidentiality of Tax Returns, House Committee on Ways and Means, Sept. 25, 1975, at 3.

States v. *Sullivan*, 274 U.S. 259 (1927). This exception and the extraordinary authority which Congress has bestowed on IRS create a powerful presumption against any proposal, such as S. 1249, to transfer that authority to other agencies of government.

The statutory authority of IRS to obtain information must not be viewed as creating some form of governmental asset which may then be transferred to other arms of the government pursuing legitimate governmental objectives. The information gained by the IRS does not in any sense "belong" to the Government. Rather, it is held in special trust by the IRS for its unique, important purpose of collecting taxes. Indeed, it is only the unique nature of the IRS function that justifies the extraordinary degree of intrusion that that agency is allowed to make into the lives of individuals. Dissemination of IRS information to other governmental agencies for non-tax purposes is a violation of the IRS' special trust.

We urge you, therefore, to adopt the approach taken by the House bill and delete the broad access provisions of Section 7 in order to avoid seriously eroding the privacy of tax information.

SOCIAL SECURITY NUMBERS

S. 1249 also contains a requirement that individuals provide social security numbers on any applications for credit, financial assistance or other government payments. This provision has no counterpart in H.R. 2811. The ACLU has long taken the position that any new mandated use of the social security number threatens the privacy of all American citizens. We agree on this point with numerous government studies and commission reports, including the 1973 report of an HEW Advisory Committee on Automated Personal Data Systems and the 1977 Report of the Privacy Protection Study Commission.

Of course, the social security number is already informally used for a variety of identification purposes. Each additional mandated use, however, is further incentive to turning the number into a "universal identifier", which would provide the key to access to a nationwide databank containing a wide range of personal information, with all the Big Brother connotations that accompany that notion. Because there are already so many informal uses for the social security number, and pooling of records is so common, each new mandated use should be considered carefully, weighing its value against the dangers arising to our civil liberties. In this case, we believe the advantages for identification are minimal in comparison with the inherent threat to the privacy of all Americans.

PROCEDURAL SAFEGUARDS

The House version of S. 1249 includes several procedural safeguards which, at the very least, should be incorporated into the Senate bill.

First, H.R. 2811 requires the head of an agency to review the claims for its validity, and places responsibility on the agency head for making a specific determination that a valid claim is due. Because of the serious consequences for innocent record-subjects that would follow a miscalculation or inaccuracy, these additional procedures to guard against such errors are crucial.

For the same reasons, we support the obligation imposed by H.R. 2811 on an agency to "make reasonable efforts to locate the individual prior to disclosing information to credit reporting agencies", when a current address is unavailable. This provision acts as insurance that individuals will be given the opportunity to respond to the possibility of disclosure, and to participate in the process by checking the accuracy of information disclosed. It also may serve to encourage otherwise unavailable individuals to meet their debt obligations. If the incentive system is to work as intended, individuals must be aware of the consequences to their credit rating if they do not meet their obligations.

We would like to commend the drafters of S. 1249 for including a requirement that the agency head "obtain satisfactory assurances from such consumer reporting agency" of compliance with the Fair Credit Reporting Act. Precisely because the restrictions on consumer reporting agencies are so relaxed, it is essential that whatever few restrictions exist be rigorously enforced. We suggest that elaboration of the specific assurances to be obtained would assist in meeting this goal.

CONCLUSION

While the ACLU appreciates the need to improve federal debt collection procedures, we oppose any measure which will deny record-subjects the rights currently afforded them by the Privacy Act. We do not object to the transfer of records to consumer reporting agencies so long as the Privacy Act continues to apply to these records, as it does to other records maintained by government contractors. If the

records are to be transferred, at the very least, we urge that other existing statutory protections not be abandoned. Mandated use of the social security number, reduction of IRS confidentiality and the other measures in S. 1249 criticized above, all would erode essential privacy protections. We recommend their removal from the bill. The pursuit of efficient debt collection must not trample on the privacy rights of all Americans.

Thank you for the opportunity to appear before the Subcommittee.

AMERICAN CIVIL LIBERTIES UNION,
Washington, D.C., July 17, 1981.

Re Nunn amendment to tax bill, H.J. Res. 266, Authorizing Disclosure of IRS Records for Non-Tax Purposes.

DEAR SENATOR: I am writing to urge you to oppose an amendment to the Economic Recovery Tax Act of 1981 (H.J. Res. 266) to be offered by Senator Nunn. The amendment would substantially undermine the privacy of federal income tax returns by providing for the disclosure and use of IRS records for non-tax purposes. It is being offered on the floor of the Senate in the absence of any Committee hearings or other opportunity for public comment.

Income tax records are perhaps the most sensitive records maintained by the federal government in terms of personal privacy. A person's tax returns are a reflection of that person's life, because they set forth, often in great detail, personal habits and associations. The beginning of a tax return gives name, address, social security number, identity and dependents and the taxpayer's gross income. Various schedules may indicate political and religious affiliations and activities, medical or psychiatric treatment, union membership, creditors, investments and holdings. Additional documents compiled by the taxpayer and pertaining to statements made on a tax return but not filed with the return contain a similar wealth of sensitive personal information.

Apart from information related to tax returns, documentary materials routinely obtained by IRS for the enforcement of the tax laws also contain vast quantities of private information. Bank records, or similar records, reveal the political causes one supports, the books and magazines one buys, the organizations one joins, as well as one's style of life, tastes and habits. People assume that these matters are confidential, and that they do not sacrifice that confidentiality when they conduct financial transactions.

The Nunn Amendment would substantially undermine the expectation of privacy which taxpayers have concerning IRS information. Among the changes in current law with respect to taxpayer privacy that the Nunn Amendment would make are the following:

The definiation of tax "return information" which can be disclosed to other federal agencies only upon the issuance of an ex parte court order would be narrowed so as to exclude all corporate tax return information. Corporate tax returns contain great amounts of private, personally identifiable information pertaining to corporate officers, shareholders and employees. Under the Nunn amendment, this information would be subject to routine disclosure for non-tax purposes outside IRS, merely upon the written request of an attorney for the government.

The amendment would make a major change in the standard under which courts can issue ex parte orders for disclosure of tax return information. The standard would be lowered to "reasonable cause to believe that the information may be relevant to a matter relating to the commission of such a criminal act." Under current law it is necessary to demonstrate that the information "is probative of a matter in issue."

The amendment would make a major change in existing law by requiring IRS to disclose "to the appropiate federal agency" any non-return information which "may constitute evidence of a violation of federal criminal laws." Under current law IRS is not mandated to make such disclosures and the burden is on the investigating agency to initiate a written request or court order procedure. The proposed change makes IRS an active participant in non-tax investigations and thereby substantially undermines the integrity of its tax information gathering procedures.

The amendment provides for disclosure of both return and non-return information to state law enforcement officials if the information is relevant to investigation or prosecution of any state felony. This proposal substantially changes the current law that disclosure of tax information to states be limited to tax-related prosecutions. Tax information should not be treated as a common resource for criminal investigations at all levels of government.

Finally, the amendment would authorize disclosure of IRS information to foreign governments with whom the United States has mutual assistance treaties. A nation

with whom the United States has a mutual assistance treaty could seek access to taxpayer records for use in a criminal investigation for which the standards of proof are dissimilar from those in the United States. Moreover, conduct which is a crime in a foreign country may not even be criminal in the United States. The broad powers of the IRS should not be used to gather information about taxpayers which can then be used for purposes different from those for which the information was obtained, and which raise severe constitutional due process problems.

The claim that the proposed amendment would put the IRS back into the fight against organized crime and drug traffic is a distortion. The IRS does not belong in that fight. Its special powers are not granted to facilitate non-tax related law enforcement. To the extent that IRS in the past has been used as an investigative resource for other government agencies, its special authority was abused. The Tax Reform Act of 1976 was passed to correct those abuses. The Nunn Amendment threatens to undermine the Act by redefining the information that deserves protection, lowering the standard of proof necessary to justify disclosure and opening broader channels of dissemination. These changes carry with them an enormous potential for privacy abuse and should not be adopted, especially in the absence of any hearings in the 97th Congress.

Thank you for considering our views.

Yours sincerely,

JOHN SHATTUCK, *Director.*

[The hearing was adjourned, at 12:12 p.m., subject to the call of the Chair.]

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